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## Towards An International Convention Against Transnational Organised Crime

By Daniel Préfontaine QC and Yvon Dandurand



The deterritorialised nature of many dangerous forms of criminal activity is offering huge challenges to criminal justice systems around the world.

Historically, the dual concepts of national sovereignty and exclusive state jurisdiction over criminal law matters have played a crucial role in the development of modern criminal justice systems. These notions are well grounded in international law. However, many observers now express serious concern about the potential consequences of the continued strict application of these principles in an era where national borders are becoming increasingly irrelevant to criminal activities.

International co-operation has therefore become an essential prerequisite to the effective repression of transnational crime. The history of nation states jealously safeguarding their jurisdiction over criminal justice matters has produced a world where criminal justice policies, institutions, procedures and laws vary widely between countries, even within a single region. These fundamental differences between national systems do obstruct and complicate co-operation between countries. In some cases, they effectively prevent it. In the meantime, as is made plainly obvious by daily incidents, criminals are clearly not affected by such legal subtleties and can go about their business without much fear of detection or apprehension.

With today's rapid communication and technology, it is possible to conduct most kind of business, including crime, from just about any point in the world. The opportunity costs associated with exploiting lax regulations in remote jurisdictions are thus lessened daily. States with weak regulation and enforcement

infrastructure offer a prime target for transnational organised criminal elements. Such states often inadvertently or willfully provide safe-havens from which criminal organisations can operate.

This raises the well-known criminological problem of 'crime displacement' to a new transnational or global level. In fact, when it comes to fighting transnational crime, it is has become evident that weakness in crime control efforts anywhere in the world is likely to affect the whole of international crime control efforts. Years of struggling in the international 'war' against drug trafficking have certainly made this amply clear. The same point, however, also applies to all forms of transnational criminality. The onus is on states, national governments, and national regulatory and law enforcement agencies to work together to demonstrate their political will to confront the issue.

After more than a decade of efforts, a significant shift took place in December 1996 when, the United Nations General Assembly, through its resolution 51/120, requested the Commission on Crime Prevention and Criminal Justice to consider, as a matter of priority, the question of the elaboration of a convention against organised transnational crime. This, of course, was following the Assembly's adoption two years earlier of the Naples Political Declaration and Global Action Plan against Organised Crime. During its last session, in April 1998, the United Nations Commission on Crime Prevention and Criminal Justice reasserted its belief that the increasingly sophisticated and globalised nature of organised crime made international co-operation a crucial element in combating that phenomenon.

It was decided that an open-ended committee

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## Transnational Organized Crime, Continued:

should be established for the purpose of elaborating a comprehensive international convention against transnational organised crime. Such a convention, it was agreed, might also include as appropriate protocols addressing trafficking in women and children, combating illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, and illegal trafficking in and transporting of migrants.

The first session of the open-ended intergovernmental committee convened in Buenos Aires, was attended by the International Centre. The plan is to have the draft convention completed in time for the *Tenth United Congress on the Prevention of Crime and the Treatment of Offenders* (Vienna, in April 2000), for adoption during the same year by the Commission and the General Assembly. The idea is to have the proposed Convention ratified by a sufficient number of countries in time for it to come into force before or at the beginning of the next millennium. This is a very ambitious but achievable goal. It certainly provides an acid test of the member states' resolve to effectively address transnational organised crime. The *International Centre* is one of two non-governmental institutes represented, and is committed to participation throughout the duration of the work by the committee.

There are, as one might expect, several outstanding issues that will have to be addressed in the course of the next two years for the proposed convention to become a viable international instrument. There is no agreement as yet on the exact scope of the proposed convention and on the nature of the transnational criminality that will be specifically addressed by the instrument. Some forms of transnational crime have in fact

been identified as the potential subjects of additional protocols to the proposed Convention. These include: trafficking in firearms; trafficking in women and children; and trafficking in migrants.

### Obstacles to International Co-operation

Among the several priorities for action in the international fight against transnational crime, many relate to the need to remove existing obstacles to effective international co-operation. Removing such obstacles is precisely what the proposed International Convention Against Transnational Organised Crime is setting out to achieve. Its purpose is to promote co-operation between state parties so that they may address more effectively the various aspects of organised crime having an international dimension. Existing obstacles to international co-operation are sometimes political, sometimes juridical, sometimes cultural, but they often also simply stem from the fundamental differences that exist between various criminal justice traditions, regimes, and practices. Many of them are surmountable provided that there is a clear political will to so.

The following are some of the specific areas which the proposed convention is expected to address.

#### 1 Controlling the Laundering of the Proceeds of Crime

This has become a privileged strategy in the fight against drug trafficking. It is also one that is particularly dependent on the participation of all national governments and the harmonisation of national legislation. It requires a high level of concerted action that is not easy to achieve. Concealing the criminal origins of assets is the key to the long-term profitability of any criminal enterprise. The UN goal in attacking laundering is to weaken

the profitability and thus the desirability of a broad spectrum of criminal behaviour, from drug trafficking to migrant smuggling to the trade in sex tourism. Beginning in April 1998 the *International Centre* has been conducting research and working towards the development of technical assistance activities in this area.

#### 2 Preventing Criminal Elements From Hiding Behind the Protection of a Corporate or other Legal Entity

It is important to make it difficult for organised criminal organisations to dissimulate their activities under the cover of legitimate legal entities and business corporations. The issue of corporate criminal liability can be very complex. There are several countries, particularly those whose legal system is in the civil law tradition, which may encounter difficulties in introducing the concept in their legal system. In May, the *International Centre* co-sponsored with Max Plank Institute in Berlin a colloquium on the subject of corporate criminal liability. The colloquium clearly emphasised the importance of resolving these problems.

#### 3 Effective Prosecution, Adjudication and Sanctions

All countries must be persuaded to ensure that, consistent with their legal system, transnational crimes are treated and dealt with as serious crimes by all parts of the criminal justice system. There are also related issues, such as that of the statutes of limitation in force in various countries, which may in some cases create ways for offenders to evade prosecution and conviction. Additionally, the growing recognition that transnational criminal activity involves far more than the drug-related crimes ad-

## Transnational Organized Crime, Continued:

dressed by the 1988 Vienna Convention has meant a corresponding emphasis on legal reform to allow prosecution across a series of possible offenses.

### 4 Facilitating the Confiscation of the Proceeds and Instrumentalities of Crime

Many countries do not as yet have effective legal means of confiscating the proceeds derived from transnational crime or property, equipment and other instruments used to commit the offence. In many cases, criminals can protect such assets against lawful confiscation by moving them to countries where confiscation is difficult or impossible. Furthermore, this issue can often be difficult to resolve when the question of asset sharing amongst jurisdictions arises. The transnational nature of many crimes casts doubt on efforts to distribute fair and accurate shares of confiscated criminal currency or goods amongst the countries, departments and agencies involved in detection, investigation, apprehension, prosecution and punishment of these crimes.

### 5 Promoting the Transparency of Financial Transactions

In order to improve the detection of financial networks linked to transnational organised crime, there needs to be a good exchange of information between countries about suspicious and other financial transactions, including exchanges of information between law enforcement agencies and regulatory bodies. States must also set in place appropriate measures to detect and monitor the physical transportation of cash and bearer negotiable instruments at the border. It may not prove easy to do so while ensuring not to impede in any way the freedom of legitimate capital movements. Moreover, the general

benefits of a transparent global financial order may not always be immediately apparent to some smaller jurisdictions, whose ability to compete and attract investment in the financial marketplace is enhanced by a deregulated banking sector and the application of strict secrecy laws to conceal the origin, ownership and destination of funds.

### 6 Facilitating Extradition Proceedings

In spite of the presence of numerous bilateral agreements and multilateral schemes relating to the extradition of offenders, there are still huge gaps in existing arrangements and lasting difficulties in making the current regime function effectively. Criminal organisations can, without too much difficulty, identify countries with weak extradition laws and systematically use these weaknesses to avoid conviction and punishment. This issue is complicated by the very natural reluctance of many states to entrust their own nationals to the treatment they will receive in foreign courts, where penalties may be seen as excessively lax, unreasonably harsh, or too often applied in an arbitrary manner.

### 7 Promoting Mutual Legal Assistance and Co-operation in Criminal Matters

There is a rather long history of international efforts to promote mutual legal assistance treaties and international co-operation in criminal matters. Most agreements are negotiated on a bilateral basis and include numerous exceptions and complications that often make their operation very problematic and their negotiation quite costly. The United Nations has produced a model treaty on international co-operation in criminal matters. Existing arrangements, however, must be regularly reviewed and

revised to ensure that the specific contemporary problems of fighting crime are effectively addressed.

### 8 Preventing the Corruption of Public Officials

The misappropriation of public funds, aid monies, or International Monetary Fund/World Bank loans by corrupt officials (and the subsequent laundering of these assets) is another criminal behaviour that merits serious concern. The recent Organization Economic Co-operation Development Convention on preventing corruption in foreign business transactions contains provisions that may well be used as a model in the UN Convention on Transnational Organised Crime.

### 9 Providing Technical and Financial Assistance

Another source of very surmountable obstacles to international co-operation comes from the absence in many countries of the necessary material and human resources required to act effectively. The effectiveness of the fight against transnational crime is dependent on the ability of all countries to achieve a minimum level of effective crime control. In many cases this cannot be achieved without financial and technical assistance from international organizations and countries with past experience in the field. The *International Centre* is committed to develop, participate in and facilitate programs of technical assistance in a number of the areas covered by the convention.

The *International Centre* is committed to tracking and participating in the development of the convention. Up-to-date information on developments in the negotiating process can be obtained from the *International Centre* at (604) 822-9875.



# The Diplomatic Conference on the Establishment of an International Criminal Court, Rome, 15 June to 17 July 1998

By Bruce Broomhall



Building on a foundation of progress made in the half-century since the Nuremberg and Tokyo Tribunals, and in particular over the last decade, the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court ("Diplomatic Conference" or "DipCon") was opened by UN Secretary-General Kofi Annan on the morning of Monday, 15 June 1998 at the headquarters of the UN Food and Agriculture Organization in Rome. Delegations from 160 states along with hundreds of NGOs participated in the Conference. The actual work of the Conference was in the care of the Committee of the Whole, chaired by Philippe Kirsch, the Legal Advisor to Canada's Ministry of Foreign Affairs. This Committee oversaw a number of Working Groups and informal meetings. Over five weeks of intense negotiations many schisms emerged and irreconcilable positions were taken, while even more were smoothed over or reconciled. Contentious issues such as the death penalty and nuclear weapons seemed to offer no hope of reconciliation, and appeared poised to wreck the meeting's progress until the last moment. Nevertheless, a sequence of package proposals brokered by the Canadian delegation moved the Conference to the point at which agreement became possible on the overall shape and mechanics of the Court. The basis of agreement was the proposed text put forward by Mr. Kirsch on the eve of 17 July, the last scheduled day of the conference. This package was voted on and adopted by a majority of over two-thirds. With this, the Rome Statute of the International Criminal Court was finalized.

The Statute and Final Act of the Conference were opened for signature after adoption. By the late afternoon of Saturday 18 July, following a signing ceremony presided over by the Secretary-General, plenipotentiaries of 26 states had signed. Once sixty states have signed and ratified, as some believe will happen within five years, the International Criminal Court will be established. At time of writing, 58 states have signed, and it is expected that symbolic number of 60 signatures will be passed before year's end.

National ratification and implementation are also crucial. For the Court to be truly effective, states will have to adopt effective implementing legislation and

institutional arrangements. Technical assistance projects and guidelines will emerge in support of this need in the coming months.

A Preparatory Commission is to prepare proposals for practical arrangements relating to the ICC's entry into operation. This includes preparation of draft texts of, among others, the Rules of Procedure and Evidence (which will crucially affect vital matters such as early release, state cooperation and the extent to which the Court can protect victims and witnesses), the Elements of Crimes and the Rules of the Assembly of States Parties. The General Assembly is expected to set a date this autumn for the PC to convene in March and August 1999 at the UN Headquarters in New York, and then again in the spring of 2000 before completing its work on 30 June of that year. The Preparatory Commission meetings will form the most pressing focus of government and NGO efforts in the immediate future.

The Statute is a complicated instrument, full of strengths and weaknesses. The concerted efforts of NGOs and leading Like-Minded delegations led to the inclusion of many positive elements in the Statute. The proprio motu Prosecutor and the provision for inherent jurisdiction will be marks of the seriousness of states parties. The absence of an armed conflict nexus in crimes against humanity and the incorporation of many positions reflecting a concern with gender violence and victims, even if not perfect, pay tribute in particular to NGO efforts. None of these aspects of the Statute could be taken for granted when the Conference opened; each represents a significant victory.

On the other hand, exclusion of the custodial state from the list of states whose ratification or declaration is a necessary precondition of the Court's jurisdiction is a real disappointment. Absence of this provision means that the Court's effectiveness will depend more than ever on the number and global distribution of the signatories it attracts.

The crime of aggression was excluded, but it seems to offer a no-win situation. Its inclusion is an important mark of the Court's legitimacy in the eyes of many countries of the South. At the same time, many of the same countries see the requirement of a Security Council determination that an act of aggression has taken place to be antithetical to an impartial ICC.

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## International Criminal Court, Continued:

Rightly or wrongly, however, it is unlikely that the crime of aggression could ever be included in the Statute without such a requirement. And unless the Council shows itself substantially more willing to make findings of aggression in the future than it has been in the past, making a precondition of such a finding will only ensure that no crime of aggression ever finds its way before the judges of the ICC.

One could go on to discuss the exclusion of nuclear weapons or the difficulty in adding new weapons to the list of those prohibited under the Statute. One could regret what appear to be possible loopholes in the cooperation procedures or uncertainties in the financing regime. At present, the strengths of the Statute are to be celebrated and the many delegations that contributed to them at Rome commended for their work. Above all, this new feature in the international landscape should be explored and cultivated carefully with the aim of making it serve the ending of impunity, the safeguarding of the dignity of victims and the deterring of abuses that its early promoters intended.

The successful conclusion of the Conference was hailed as a major accomplishment, not just in light of the complexity of the task, but because of the step forward that it represents in the whole history of contemporary international law. Mr. Kirsch said that the ICC will have a major impact for future generations. Secretary-General Annan said that, although many would have liked a Court vested with even more far-reaching powers, the Court was still "a gift of hope to future generations, and a giant step forward in the march towards universal human rights and the rule of law". The Foreign Minister of Italy, Lamberto Dini, believed that the Court's founding would 'mark not only a political but a moral stride forward by international society'

The Canadian delegation as a whole and Mr. Kirsch as chair deserve the highest praise for this accomplishment. The Diplomatic Conference could not have been brought to a successful conclusion without their resourcefulness and unfailing dedication. This is not to say that the Statute is flawless. Much work, and much room for continuing progressive development, lies ahead. Nonetheless, the fact that the major hurdle of establishing a Statute now lies behind us is itself a considerable tribute to the efforts of those participating at Rome. No delegation contributed more substantially to the end result than did the Canadian. 🇨🇦

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London; LLB University of  
British Columbia 1996. The  
author was accredited to  
participate at the Rome  
Conference as a representa-  
tive of both the International  
Centre for Criminal Law  
Reform and Criminal Justice  
Policy (Mr. Daniel C.  
Préfontaine, Q.C., Executive  
Director) and the Associa-  
tion Internationale de Droit  
Penal (Professor Cherif  
Bassiouni, President). I am  
grateful to both organisa-  
tions for that opportunity.  
The International Centre  
generously provided financial  
support for my attendance at  
the Conference, for which it  
has my heartfelt apprecia-  
tion. My primary activity at  
the Conference was in  
assisting the NGO Coali-  
tion's Trigger Mechanisms  
and Admissibility Team.

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## Visit of the Solicitor General For Scotland



Following the Scottish Referendum in favour of Devolution last year, the Scottish Crown Office, in common with other government departments, has embarked on a process of constitutional and legal change. In addition to all that goes with the transfer of legislative authority from Westminster to Edinburgh, Scotland will also be coping with the effects of the adoption into domestic law of the European Convention on Human Rights, which in many ways mirrors the Canadian Charter of Rights.

In October of this year, Colin Boyd QC, Solicitor General for Scotland and Norman McFadyen, Deputy Crown Agent, visited Victoria and Vancouver in Canada to engage in discussions with their counterparts as well as other organisations.

The Criminal Justice Branch of the Ministry of the Attorney General in Victoria arranged for the visitors to attend the proceedings of the Heads of Prosecutions of Canada Meeting where they met and exchanged views with Provincial and Federal Prosecutors.

In Vancouver, the International Centre organised meetings with the Legal Services Society of British Columbia, the Police Complaint Commissioner of British Columbia, the Faculty of Law, University of British Columbia and members of the International Centre.

During the meeting with the Legal Services Society questions were raised about budgeting, the degree of autonomy of the Legal Services Society, the use of staff lawyers and contractual lawyers, choice of counsel, professional rates and extraordinary costs. Scotland has a very high per capita expenditure on criminal legal aid; 9 times more than the Netherlands and half as much again as England and Wales. Unlike Canada, its expenditure on civil legal aid is much smaller than what it spends on criminal legal aid. The Scottish Legal Aid Board has comparatively less flexibility than its counter part in British Columbia in spending its funds and there is growing political pressure to focus expenditure on areas of unmet needs. On the issue of choice of solicitor, Scotland has set up a pilot Public Defence Solicitor Office (PDSO) in Edinburgh employing 6 full-time solicitors and with clients being directed to this Office based on month of birth. This is felt to be necessary because the Government, through the Board, which will operate the pilot, has to report to Parliament on the Office after 3 years. The pilot will automatically terminate after 5 years unless the new Scottish Parliament renews the powers. About 15% of cases in Edinburgh will be directed to the PDSO. Scottish solicitors and counsel are paid by time in court but

the Government is consulting on the introduction of a scheme which will be based largely on fixed payments in relation to summary work. In consequence, solicitors will fare better financially in summary guilty plea cases than longer more complex ones, but the gain in plea cases should off-set the loss in longer trials. Canada had tried price capping, and altering professional rates to avoid paying for adjournment time, but this met with strong reactions from the Bar.

At the Office of the Police Complaint Commissioner (OPCC), Colin Boyd and Norman McFadyen were provided a general briefing on the working of the OPCC, and a review of a recent Commission of Enquiry on Policing and the Community headed by The Hon. Mr Justice Wallace Oppal. The enquiry, among other things, recommended civilian oversight of police investigations including those of the Royal Canadian Mounted Police, which currently has their own separate Public Complaints Department. In Scotland, there is no civilian oversight of police complaint investigations except in two respects. The regional public prosecutor (the Regional Procurator Fiscal) and the Lord Advocate and Solicitor General, are responsible for the investigation and consideration of all complaints inferring criminality. This involves directing public enquiries but will also normally involve the interview of the complainer and all significant witnesses by a member of the prosecutor's staff. There are strict rules in place to avoid any information obtained in such an investigation being made available to any prosecutor who may be dealing with an associated case against the complainer. H M Inspectorate of Constabulary in Scotland deals with complaints about the handling of complaints against police officers under police internal complaints procedures and for several years there has been a lay inspector of Constabulary who has a particular involvement in the consideration of such complaints. Police liability in Scotland is based on malice and in Canada on a *standard of care*. Mr Boyd felt that the proposed new Scottish human rights legislation would have an impact on how police do business in the future.

Later, Messrs Boyd and McFadyen met with Dean Joost Blom of the Law Faculty of the University of British Columbia, and other Members of the Faculty including Professor Peter Burns QC, Chairman of the Centre's Board of Directors. Professor Yvon Dandurand, Director of Policy Development and Human Rights, Eileen Skinnider, Director of the Human Rights Program and visiting scholar Hon Justice Elizabeth McFadyen, all representatives of the Centre, also participated in the meetings. 🍷

# 1998 Banff Diplomatic Forum, October 30 — Multilateral Approaches to Security

By Daniel C. Préfontaine, Q.C.

**I**t seems that any discussion on foreign policy these days inevitably focuses on security, democratic development, good governance and the rule of law. Security is defined in many ways. In the international context it conveys protection from external aggression and threats of violence from a neighboring state. In recent times it includes internal conflicts and lack of security and safety to citizens of one state or territory. Security also extends to social and human security. Sound economic conditions, healthy physical environment and political stability are prerequisites in order to have overall national security. In addition, to survive and prosper in the world today it is imperative for a sovereign state or territory to enter into bilateral and multilateral associations, agreements and arrangements. In a multilateral framework belonging to international organizations as well as regional associations is now accepted as commonplace and essential.

The threats to domestic security are no longer, if they ever were, limited to external acts of aggression. The increase in transnational crime has become both an external and internal threat to the well being and security of our communities. The fundamentals of our democracies which includes good governance and the rule of law are subject to erosion as new forms of transnational alliances are forged between organized criminals around the globe.

The rule of law, as opposed to the rule by the law, conveys a system of laws and regulations that citizens are generally aware of, respect, as a system that applies to

all. These laws and their administration are in place to ensure a balance of political rights, human rights, and civil liberties. Fairness and equity and other basic principles of justice are part and parcel of a democratic system.

In this 50th Anniversary year of the United Nations Universal Declaration on Human rights promoting democracy, good governance and the rule of law is widely believed to be an important way to ensure international and domestic security. However, it is clear that promoting democracy, democratic processes and the rule of law is not nearly enough to protect peace and ensure human and public security, including security of the person. In fact the weaknesses of criminal justice institutions to deal with crime effectively threatens the sustainability of democratic institutions. A major concern today is that both emerging and established democracies continue to be plagued by the problem of violence and increased property crimes.

There is an increased recognition that democracy and a better quality of life can only flourish in a context of peace and security for all, both collective and personal. Crime poses a threat to stability and to a safe environment. Crime prevention and control, through effective criminal justice institutions and with due regard to human rights, is therefore essential to peace, security and prosperity (both financial and personal).

*Without* credible and efficient systems of law enforcement and justice, *without* the guarantee that anyone who abuses power, violates human rights, or arbitrary assaults, dispossesses or coerces others will be stopped and receive appropriate

punishment, *without* the secure knowledge that the state will protect its citizen, efforts to nurture peace and ensure security will mean very little.

Peace and security are always fragile and must constantly be reinvented, consolidated and reinforced. This is particularly true in post conflict situations characterized by uncertainty and insecurity, where the power vacuum left by the conflict is likely to be exploited by criminal elements as we are witnessing today. But it is also true of all societies.

What do I mean by “credible” criminal justice institutions? There is a growing recognition of the crucial importance of CREDIBLE law enforcement and criminal justice institutions in building and maintaining peace. In order to be “credible”, these institutions must be effective in providing personal physical security and safety, preventing crime and protecting citizens.

In many parts of the world that credibility is very low. Recent data from the International Crime (Victim) Survey in 1996 show how low the credibility of justice institutions has fallen in many countries, particularly in developing countries and in countries in transition. In Canada, fortunately, this is not the case. The credibility of the criminal justice system and the confidence in law enforcement agencies is very high (around 80% of respondents). Whereas, 80% in places like Latin America there is little confidence in the system providing protection to its citizens.

On the subject of security and safety, one must note the growing

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reliance of whole sectors of society on private security measures. Security services are increasingly becoming a "commodity" to which people and groups have differential access depending on their financial means and power. This is a potentially dangerous trend. It is full of short term and long term implications for democratic institutions, social peace and democratic institutions, e.g. security for the rich and little for the poor and disadvantaged.

The recent focus of international efforts has been on developing international and multi-lateral instruments of cooperation. In the context of multilateral institutions, three major themes have held the center of recent efforts in the field of crime prevention and criminal justice:

1) The development of the International Criminal Court. I refer to the draft Statute agreed upon in Rome last July,

2) Efforts to improve international cooperation to combat transnational organized crime, and

3) A renewed focus on technical assistance and cooperation initiatives between countries.


There are still some major obstacles to international cooperation in dealing effectively with transnational crime. It is widely believed that certain forms of transnational organized crime can have some profoundly destabilizing effects on domestic and regional peace (e.g., trafficking in firearms), on democratic institutions (e.g. through corruption), and on human security and safety (drug trafficking, biker gangs).

There currently is a process in place to draft a new *International Convention Against Transnational Organized Crime*. Its main purpose is to facilitate international cooperation and obtain a commitment from member states to focus their crime efforts on transnational organized crime. The scope of the proposed

convention has yet to be determined, but it may include international measures to various forms of trafficking, corruption and fraud, including trafficking in firearms, in migrants, and in women and children for the purpose of their sexual or other exploitation and very effective use of extradition, mutual legal assistance and confiscation of proceeds of crime and money laundering/financial fraud.

There is no question that transnational organized crime represents, in many cases, a serious threat to national security, collective security and personal safety. However, one should always remain cautious about the potential detrimental effect of international pressures (reflecting the domestic law enforcement agenda of some powerful countries) to devote more resources to transnational crime and therefore less to domestic human security issues may have on many countries with weak criminal justice systems and few resources.

The number of international technical assistance initiatives in which Canada and many other countries are involved in the field of human rights and criminal justice is growing steadily. That is, in itself, an encouraging sign. To what extent such initiatives have and can in the future contribute concretely to building peace, ensuring security and making democratic institutions sustainable and credible has yet to be determined. The challenge continues to inculcate everywhere a culture of prevention as a basis for a secure and peaceful world community.

A final word on the burgeoning business of technical assistance aid in the area of law reform. Many "Westerns" involved in providing assistance do not know the ground on which they have set foot and are unfamiliar with the domestic scene to create change. Real change takes time and patience, more importantly the will internally to reform must be sincere and sustained. 

## Upcoming Events & Conferences

- International Symposium on Legal Aid Legislation and Theories in China, Beijing, China, March 22-26, 1999
- Drugs and Human Security in the Americas: Experts Meeting, San Jose, Costa Rica, March 29-30, 1999
- Planning Meeting for the Workshop on Women in the Criminal Justice Systems (10th Congress Preparatory Meeting - HEUNI, 2000) Helsinki, Finland, April 9-10, 1999
- 8th United Nations Commission of Crime Prevention and Criminal Justice, Vienna, Austria, April 27-May 6, 1999
- 3rd Formal Ad Hoc Meeting: International Convention Against Transnational Organized Crime, Vienna, Austria, May 5-7, 1999
- 13th International Congress on Juvenile Criminology Research (University of Liège), Belgium, May 26-28, 1999
- European Committee on Crime Problems, Strasbourg, June 7-11, 1999
- Centre for Sentencing and Research, Law School, University of Strathclyde - "Sentencing and Society: An International Conference" Glasgow, Scotland, June 24-26, 1999
- Ad Hoc Committee Meeting United Nations Transnational Organized Crime Convention/Protocols, Vienna, Austria, June 28-July 2, 1999
- International Society for the Reform of Criminal Law (ISRCL) Annual Conference - Commercial and Financial Fraud: A Comparative Perspective, St. Georges Bay, Malta, July 8-12, 1999
- ICC Preparatory Commission, New York, USA, July 26-Aug. 13, 1999
- American Correctional Association Conference: Denver, USA, Aug. 8-12, 1999
- 4th Annual Conference and General Meeting of the International Association of Prosecutors, Beijing, China, Sept. 5-10, 1999
- Canadian Congress on Criminal Justice - "Values & Vision for the 21st Century" Edmonton, Canada, Sept. 22-25, 1999
- "10th International Symposium on Victimology, Research and Action for the 3rd Millennium", Association Quebecoise Plaidoyer-Victimes, Montreal, Canada, Aug. 6-11, 2000



# Canada's New Law on Corruption in Foreign Business Transactions

## International Centre to host Corporate Symposium, February 4-5 1999

By Allan Castle, Director, Transnational Financial Crime Program



Corruption and bribery are widespread and worsening phenomena in international business transactions. These practices undermine the rule of law and economic development, distort free and fair competition, and increase costs for businesses and consumers alike. Corruption and bribery in international business transactions also serve to support non-democratic and arbitrary rule in those regions most in need of good governance and a fair and open economy.

For many years, the United States was the only jurisdiction to have a comprehensive legal prohibition of such practices. Under the *Foreign Corrupt Practices Act*, or FCPA, bribery of officials in foreign jurisdictions for access to contracts, tax or labour concessions, etc., was proscribed under law. Other developed states, notoriously France and Germany, not only lacked equivalent legislation, but had tax codes which allowed the deduction of foreign bribes as legitimate business expenses. Following intense negotiations after years of inaction on this issue, in December 1997 the states of the OECD concluded a *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*. As a leading contributor and signatory to the Convention, Canada is committed to introduce new legislation in 1998 governing corruption and bribery in foreign business transactions.


The benefits of action against corruption are clear when one examines the crippling effect corrupt practices, under-the-table payments and influence peddling

have had on institution building and the rule of law in developing or democratising societies. The "when in Rome" approach, which if amoral has in the past appeared expedient at least in the short term in many countries, has come to be recognised in both the private and public sectors as counter-productive from a business perspective as well. Leaving aside for one moment the human cost, corruption in the long term renders a society continually unstable and unreceptive to healthy and mutually beneficial international business development.

What will this legislation mean for Canadians doing business overseas? As a joint endeavour, the International Centre for Criminal Law Reform & Criminal Justice Policy and Transparency International Canada are hosting a two-day event entitled: *Corruption and Bribery in Foreign Business Transactions: Corporate Symposium on New Global and Canadian Standards* on February 4<sup>th</sup> and 5<sup>th</sup> 1999 in Vancouver. The Symposium will provide key information for concerned Canadian firms with overseas business portfolios, and for those firms currently considering overseas investment. The seminar will also provide an opportunity for the corporate community to respond to the proposed Canadian legislative initiative as part of the interactive process of policy development. Highlights will include:

- Keynote addresses from senior international experts on the challenges facing Canadian companies doing business in foreign markets.
- Explanation of the OECD convention and Canada's legislation from two senior representatives of the Departments of Justice and Foreign Affairs.

- Corporate response: a perspective from the business community, participant response to the new legislation & general question period.

Further information and registration information can be obtained from: Vivienne Chin at the International Centre for Criminal Law Reform & Criminal Justice Policy in Vancouver, (604) 822-9875, fax 822-9317 – or via email at [chin@law.ubc.ca](mailto:chin@law.ubc.ca). 

### Symposium on Crime and Justice in a Borderless Era Ritsumeikan University - Kyoto Japan

On November 2, 1998 Mr. Brian Tkachuk, on behalf of the International Centre, participated in a symposium on Crime and Justice in a Borderless Era, held at Ritsumeikan University in Kyoto Japan. Mr. Tkachuk delivered two papers entitled "Recent International Efforts to Address Transnational Crime" and "Meeting the Challenges of Violent Crime: A Canadian Perspective". A second symposium was held on November 4, 1998, focusing on the "Public Defender System Today". At this event Professor Donald Egleston of the UBC Faculty of Law delivered a paper entitled "Criminal Legal Aid in British Columbia". Participation at these events was part of a collaborative research activity agreed upon with Ritsumeikan University. The symposia were attended by faculty, students and members of the general public, as well as representatives from the Law Faculty, American University, Washington, D.C.

# The 10th United Nations Congress One Year From Now



Between the 10 and the 17 of April 2000, delegates from all over the world will be going to Vienna to attend the 10th United Nations Congress on the Prevention and the Treatment of Crime. For nearly fifty years, each congress has been a defining moment for the activities of the United Nations in the areas of crime prevention and criminal justice. The theme of the 10th Congress is ***Meeting the Challenges of the 21<sup>st</sup> Century***. Not surprisingly, questions relating to transnational crime, corruption, and computer crime will all figure prominently on the agenda. Special attention is expected to be given to the ongoing work on the development of a new convention against transnational organized crime, including special protocols dealing with traffic in firearms, as well as traffic in women, children and migrants.

These are not, however, the only issues of concern to the international community, and in particular for developing countries. The message has been coming loud



and clear out of recent regional meetings held in preparation of the Congress. The building of credible law enforcement and criminal justice institutions, the implementation of relevant human rights and other international justice standards within these institutions, as well as the need for nations to work together and help each other achieve these goals are all mentioned as priorities.

The *International Centre* recently participated in two

preparatory meetings for the 10th UN Congress: the African Regional Preparatory Meeting, in Kampala, Uganda on December 7-9, 1998, and the Latin American and Caribbean Regional Preparatory Meeting, in San José, Costa Rica this last February.

The African meeting resulted in a number of action oriented recommendations, reflecting the African perspective. The recommendations emphasized the need to support developing countries, both financially and technically, to champion the cause of public safety and human rights, and to promote the rule of law. The recommendations supported ongoing international efforts and development of instruments to combat transnational and organized crime and stressed the importance of global, regional and sub-regional cooperation and assistance for developing countries to meet their obligations under these initiatives. The need to create new and innovative crime prevention strategies was identified, with special attention to the situation of



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# 13th Coordination Meeting of the UN Crime Prevention and Criminal Justice Programme



The Thirteenth annual meeting of the United Nations Crime Prevention and Criminal Justice Programme Network was held September 23-24, 1998 in Italy. The meeting was organized and convened by UNICRI with the support of the International Scientific and Professional Advisory Council (ISPAC). The meeting, attended by representatives from all fourteen institutes was Chaired by Mr. Alberto Brandanini, O.I.C., UNICRI, with Director Matti Joutsen, HEUNI acting as Rapporteur.

The meeting reported that all decisions and recommendations of the Twelfth Co-ordination Meeting had been implemented. The meeting reviewed the activities of the members of the UN Programme Network and those planned for 1999. It was decided that a joint statement of the UN Programme network be prepared by representatives of the

network and be presented by UNICRI at the next session of the Commission. It was agreed that the upcoming year would focus on co-operation and co-ordination among the members of the UN Programme Network, and especially with CICP. This co-operation will be further strengthened as related to the Commission's priority areas in general, and specific projects in particular. This co-operation and co-ordination will be particularly focused in the area of transnational organized crime and the preparations for and participation in the Tenth United Nations Congress on Crime Prevention and the Treatment of Offenders. The Congress is scheduled to take place April 9-17, 2000 in Vienna, Austria.


The following commitments and plans regarding the workshops at the 10<sup>th</sup> Congress were identified at the Coordination meeting. The four workshops for the Tenth UN Congress include:

**Combating Corruption:** organized by UNICRI with the assistance of ISPAC

**Community Involvement in Crime Prevention:** organized by ICCP with the assistance of UNICRI

**Crimes related to the Computer Networks:** organized by UNAFEI with the assistance of AIC and NIJ

**Women in the Criminal Justice System:** organized by HEUNI with the assistance of ICCLR & CJP and UNICRI.

Recent discussions have agreed that there would be a streamlining of the outcome of the 10<sup>th</sup> Congress. There would only be a single declaration to go forward to the "millennium session" of the General Assembly. The UN Programme Network was invited to provide the CICP with ideas to be included in the envisaged Declaration. 

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## The 10th UN Conference

vulnerable groups such as women and children and the mentally ill. Recommendations also addressed the urgency of combating prison overcrowding and emphasized the need for member states to promote restorative justice and other alternative practices to confront this issue.


Several similar recommendations came out of the San José meeting. A special appeal was made in favor of promoting compliance with the UN standards and norms on crime prevention and criminal justice and making every effort to incorporate them into national law.

Participants pointed out that the 10th Congress should recom-

mend effective means of implementing the provisions of the proposed convention against transnational organized crime. It was noted that small countries of the region, particularly in the Caribbean, were especially vulnerable to transnational organized crime and faced unique problems. It was deemed essential that attention be given to these special needs and to provide these countries with adequate assistance.

Delegates expressed concern at the increase of violent crimes in their region, including violence committed using firearms and explosives. Increasing violent crime and the fear that it generates have seriously impacted on the security of citizens. Delegates considered that tackling this issue was a major emerging challenge to global security and the rule of law. Several recommenda-


tions referred to the need to take effective action against the harm done by firearms, to implement existing conventions and to assist local authorities in devising effective action to counter that and other threats to human security.

Various issues related to migration present new challenges in crime prevention. The delegates therefore emphasized the need to design, as part of crime prevention strategies, measures to combat xenophobia, racism and violations of the rights of migrants. Finally, several recommendations were aimed at encouraging greater community and civil society participation in the design and the implementation of local crime prevention strategies. 

## People at the Centre

The International Centre is delighted to introduce its newest members. Please join us in welcoming:

**Honourable Justice Elizabeth McFadyen** has joined the International Centre on a three month study sabbatical from the Court of Appeal of Alberta. Justice McFadyen, a graduate of the University of Saskatchewan began her career as a prosecutor and then move on to The Tax Litigation Section, Department of Justice, Ottawa. She then moved on to Alberta where in 1976 she was appointed to District Court of Alberta as the first federally appointed woman judge in Alberta. She became Judge of Court of Queens Bench on Amalgamation and in 1993 was appointed to the Alberta Court of Appeal and the Northwest Territories Court of Appeal. Justice McFadyen is also a Judge of the Court Martial Appeal Court. This fall she will work with the International Centre and the UBC Faculty of Law. Her research will focus on the independence of the judiciary.

**Markus Wagner** is a visiting student from the University of Giessen, Germany. Markus will be working with the Centre until July 1999. he has completed two years of law school prior to joining the Centre in September 1998. His concentration is on international relations and human rights, paying special attention to the developments of the International Criminal Court, as well as international environmental law. Markus is also involved with the national Model United Nations, a simulation of the United Nations, as the Director of the Commission on Crime Prevention and Criminal Justice. His main area of work at the International Centre is with the Transnational Financial Crime Program. 

INTERNATIONAL SOCIETY  
FOR THE REFORM OF CRIMINAL LAW  
13<sup>TH</sup> INTERNATIONAL CONFERENCE

**COMMERCIAL AND FINANCIAL FRAUD:  
A COMPARATIVE PERSPECTIVE**

8<sup>th</sup> - 12<sup>th</sup> JULY, 1999

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