



ANNEXURE

DRAFT INTERNATIONAL CONVENTION ON INTELLIGENCE COOPERATION TO COMBAT INTERNATIONAL CRIME

THE STATES PARTIES TO THIS CONVENTION,

BEARING IN MIND THAT international crimes present a common threat to security and stability globally;

RECALLING that various international instruments and Resolutions of the United Nations Security Council obligate States Parties to cooperate in combating the respective international crimes;

NOTING THAT military and civilian intelligence agencies can largely contribute to assist crime intelligence agencies and law enforcement in general with the prevention of international crime, the interdiction of contraband, the identification of intelligence targets and the execution of special investigative techniques such as controlled deliveries, as well as assisting peace support and peace enforcement operations sanctioned by the United Nations Security Council;

REALISING THAT international cooperation is imperative for the successful combating of international crimes;

RECOGNISING the importance of intelligence-led policing in combating international crime;

ALSO NOTING the convergence of and common areas between international crimes which provide focus areas for regional and international intelligence cooperation to combat international crimes,

HAVE AGREED AS FOLLOWS:

Article 1: Use of terms

For the purposes of this Convention:

1. **“Crimes against humanity”** means the crimes as defined in Part 2 of the *Rome Statute of the International Criminal Court*;
2. **“Crimes relating to the proliferation of weapons of mass destruction”** means the contravention of prohibitions enacted in national laws by States prohibiting any non-state actor to manufacture, acquire, possess, develop, transfer or use nuclear, chemical or biological weapons and their means of delivery, interpreted within the context of the Treaty on the Non-Proliferation of Nuclear Weapons, the Convention on the Development, Production, Stockpiling, and the Use of Chemical Weapons and their Destruction, and the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and their Destruction;
3. **“Fusion”** means the management of the flow of information and intelligence across levels and sectors of government and private industry, in order to establish an intelligence center or creating a computer network, in order to support-
 - (a) the implementation of risk-based, information-driven prevention, response, and consequence management programs;
 - (b) efforts to address immediate or emerging threat-related circumstances and events;
 - (c) the exchange of information from different sources, including law enforcement, public safety, and the private sector;
 - (d) the turning of information into meaningful and actionable intelligence and information;
 - (e) the identification of emerging crime threats; and

- (f) ongoing efforts to address criminal activities.
3. “**Genocide**” means the crime defined in Part 2 of the Rome Statute of the International Criminal Court;
 5. “**ICPO-INTERPOL**” means the International Criminal Police Organisation;
 6. “**International crimes**” means crimes against humanity, crimes relating to the proliferation of weapons of mass destruction, mercenary crimes, genocide, organised crime, mercenary crimes, piracy, terrorist crimes, and war crimes;
 7. “**Mercenary crimes**” means the recruitment, use, financing or training of mercenaries as well as the direct participation by a mercenary as defined in Article 1 of the International Convention against the Use, Financing and Training of Mercenaries in hostilities or in a concerted act of violence¹;
 8. “**Organised crime**” means the planned commission of criminal offences determined by the pursuit of profit and power which, individually or as a whole, are of considerable importance and involve more than two persons, each with his/her own assigned tasks, who collaborate for a prolonged or indefinite period of time-
 - (a) by using commercial or business-like structures,
 - (b) by using force or other means of intimidation; or
 - (c) by exerting influence on politics, the media, public administration, judicial authorities or the business sector.
 9. “**Piracy**” means the crime defined in section 101 of the United Nations Convention on the Law of the Sea, committed by an individual or a group of individuals;
 10. “**Terrorist crimes**” means any acts or omissions that are committed in whole or in part with the intention of intimidating the public, or a segment of the public, with regard to its security, including its economic security, or compelling a person, government or a domestic or an international organisation to do or refrain from doing any act, whether the public or the

¹ The developments to regulate the issue of private military and private security companies may be factored into this definition See UN, 2008(b).

- person, government or organisation is in or outside the country where the crime is committed, and that intentionally-
- (a) Causes death or serious bodily harm to a person by the use of violence;
 - (b) endangers a person's life;
 - (c) causes a serious risk to the health, or safety of the public or any segment of the public;
 - (d) causes substantial property damage, whether to public or private property, if causing such damage is likely to result in the conduct or harm referred to in any of paragraphs (a) to (c); or
 - (e) causes serious interference with or serious disruption of an essential service, facility or system, whether public or private, other than as a result of advocacy, protest, dissent or stoppage of work that is not intended to result in the harm referred to in paragraphs (a) to (c); and
- any conspiracy, attempt or threat to commit an act or omission described above; and
11. **“War crimes”** means the crimes defined in Part 3 of the Rome Statute of the International Criminal Court.

Article 2: Scope and objects

1. The scope of this Convention is to promote intelligence cooperation between-
- (a) Intelligence agencies on an interagency level (inclusive of military, civilian and crime intelligence agencies) within States Parties;
 - (b) States Parties on a bilateral level;
 - (c) States Parties and relevant regional and international organisations involved in the combating of international crime; and
 - (d) regional and international organisations.



2. The object of the intelligence cooperation referred to in Article 2 is to prevent and investigate international crime and not in support of covert action.

Article 3: Measures against abuse of Convention

1. States Parties undertake, in respect of intelligence cooperation in terms of this Convention-
 - (a) not to condone the use of torture or mistreatment;
 - (b) to use caveats and assurances in cases where torture or mistreatment is foreseen, in order to prevent torture or mistreatment;
 - (c) when such caveats and assurances are not enough to minimise the risk of abuse or torture, senior management or ministerial approval must be obtained;
2. States Parties shall consider the establishment of similar reporting and oversight mechanisms in respect of civilian, crime and military intelligence agencies.

Article 4: Legal framework for combating international crimes

1. States Parties undertake to, where it has not yet been done yet, consider becoming Parties to all international instruments pertaining to the prevention and combating of international crime and to take the required steps to effectively implement such international instruments in their national territories.
2. States Parties shall in particular consider enacting laws to empower law enforcement agencies to apply special investigative techniques of

- undercover operations, surveillance, including electronic surveillance and controlled deliveries in order to combat international crimes.
3. States Parties shall consider promoting the conclusion of bilateral agreements on police cooperation, and the exchange of information based on the INTERPOL Model Police Cooperation Agreement with countries sharing common international crime threats.

Article 5: Management, use and exchange of criminal information

1. States Parties shall develop policies, structures and methods for the fusion of intelligence between civilian, military and crime intelligence agencies from the local to regional and national levels, the coordination of intelligence activities and the dissemination and use of intelligence to combat international crime.
2. The fusion of intelligence shall not only be focused on international crimes, but an all-crimes approach shall be followed, in order to also serve the local communities' interest and to detect shared illicit nodes between different crimes.
3. States Parties shall consider the closest possible cooperation between civilian, military and crime intelligence agencies, as well as customs, immigration and revenue services in respect of the identification of suspected criminals, the tracing of fugitives, the identification of opportunities for controlled delivery, and the interdiction of contraband.
4. For the purposes of this Article States Parties shall develop a trusted information environment to develop trust between agencies, and also to promote an attitude of cooperation between agencies.
5. States Parties shall consider to fully participate in regional civilian, crime and military intelligence organisations, including contributing to joint databases, the development of regional crime threat analyses and identification of matters for joint investigation.



6. States Parties shall assist with the establishment of, participate in, and cooperate with joint investigation teams set up to address mutual international crime threats identified through regional and international crime threat analysis and subject to the coordination of relevant regional and international crime combating organisations.
7. States Parties shall use the secure INTERPOL communications network for the exchange of crime information and contribute and maximally use INTERPOL databases in particular the MIND/FIND system.
8. Joint investigation teams must respect the sovereignty of States Parties, which through their best endeavours must facilitate the investigations of joint investigation teams.
9. The focus of intelligence activities related to this Convention shall be on the common areas and convergence of international crimes, including-
 - (a) Travel information, mail and courier services, customs transactions and documents and companies or legal entities which could possibly serve as front companies;
 - (b) illicit nodes which can be shared by criminals including obtaining forged passports, drivers' licences and fraudulent documents, obtaining the assistance of dishonest accountants and bankers for money laundering or money transfers, illegally obtaining firearms and explosives; and setting up training camps and safe houses;
 - (c) communications, including cryptology used by criminals involved in international crime;
 - (d) the shared use of technology by criminals involved in international crimes;
 - (e) violence and corruption as indicators of common areas between the respective international crimes;
 - (f) financial transactions and money-laundering;
 - (g) organisational structures and goals of criminal organisations;
 - (h) cultural links between suspected criminals;
 - (i) acts to gain popular support; and

- (j) typical trust gaining actions committed by criminals.

Article 6: Regional and international intelligence cooperation

1. States Parties shall contribute crime intelligence to relevant regional organisations and to ICPO-INTERPOL and cooperate in the analysis thereof in order to develop regional and international crime threat analysis.
2. States Parties shall consider the granting of immunities and privileges to INTERPOL officials of the INTERPOL General Secretariat and INTERPOL Regional Bureaus to protect information in their possession, to protect them against search, seizure and arrest where they act in the scope of their duties on behalf of INTERPOL. Such immunity shall not include members of national police and law enforcement agencies attached to INTERPOL National Central Bureaus of States Parties.
3. States Parties undertake to provide information to the United Nations and the specialised agencies thereof-
 - (a) in support of peacekeeping and peace support missions approved by the United Nations Security Council;
 - (b) to enforce United Nations Security Council Chapter 7 Resolutions in respect of the combating and prevention of terrorism, and the proliferation of weapons of mass destruction; and
 - (c) to enforce sanctions of the United Nations, including sanctions in respect of travel bans, the supply of arms and asset freezing in terms of Chapter 7 Resolutions of the United Nations Security Council.
4. ICPO-INTERPOL, Regional economic integration organisations and agencies of the United Nations involved in the combating of international crimes, undertake to, subject to the Constitutive rules applicable to them-
 - (a) Conclude bilateral and multilateral agreements between each

- other in respect of intelligence cooperation and coordination;
- (b) the development of Regional, and where applicable, international crime threat assessments in respect of international crimes;
 - (c) the development of strategies to address those threats;
 - (d) the identification of projects which could be investigated by Joint Task Teams formed in collaboration with the national police and law enforcement agencies of the States Parties directly affected by the particular international crimes.

Article 7: Good practices to protect human rights

States Parties, when reviewing their legal and institutional frameworks for intelligence services and their oversight, will consider the good practices proposed by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (Human Rights Council Document A/HRC/14/46)², dated 5 May 2010, in order to ensure respect for human rights by intelligence agencies while countering terrorism.

Article 8: Settlement of disputes

States Parties shall endeavour to settle disputes concerning the interpretation or application of this Convention through negotiation.

² UN, 2010.

Article 9: Signature, ratification, acceptance, approval and accession³

1. This Convention shall be open to all States for signature fromuntil.....at the United Nations Headquarters in New York.
2. This Convention shall also be open for signature by regional economic integration organisations, ICPO-INTERPOL, and agencies of the United Nations involved in the combating of international crimes.
3. This Convention is subject to ratification, acceptance or approval.
4. This Convention is open for accession by ICPO-INTERPOL, any agency of the United Nations involved in the combating of any international crime or any any State or any Regional economic integration organisation of which at least one member State is a Party to this Convention. At the time of its accession, any organisation referred to above shall declare the extent of its competence with respect to the matters governed by this Convention. Such organisation shall also inform the depository of any relevant modification in the extent of its competence.

Article: 10: Entry into force

1. This Convention shall enter into force on the ninetieth day after the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession. For the purpose of this paragraph, any instrument deposited by a regional economic integration organisation shall not be counted as additional to those deposited by any Member State of such organisation.
2. For each State or regional economic integration organisation ratifying or accepting, approving or acceding to this Convention after the deposit of the fortieth instrument of such action, this Convention shall

³ Articles 8 to 12 are based on the wording of the United Nations Convention Against Transnational Organised Crime. Some provisions such as those related to amendment have been omitted for purposes of this study.

enter into force on the thirtieth day after the deposit by such State or organisation of the relevant instrument.

Article 11: Denunciation

1. A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.
2. A regional economic integration organisation shall cease to be a Party to this Convention when all of its Member States have denounced it.

Article 12: Depository

1. The Secretary-General of the United Nations is designated the depository of this Convention.
2. The original of this Convention shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorised thereto by their respective Governments, have signed this Convention.



SUMMARY

- TITLE:** Intelligence and intelligence cooperation in combating international crime: selected case studies.
by
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- DEGREE:** Doctor Philosophiae (International Relations).

This study firstly focuses on the response to the post-Cold War era with the shift of the focus of intelligence to terrorism, proliferation of weapons of mass destruction, and transnational organised crime. Intelligence cooperation in respect of international crimes, including mercenary crimes, piracy and war crimes, crimes against humanity and genocide is analysed, as well as peacekeeping intelligence. Secondly the focus is on intelligence cooperation in response to the events of 11 September 2001 in the United States of America, and intelligence failures in respect of weapons of mass destruction in Iraq. Intelligence cooperation on the national level is analysed with reference to the United Kingdom and the United States of America; on regional level, with reference to the African Union, the European Union and South East Asia; and on international level with reference to INTERPOL and the United Nations. International and regional obligations in respect of intelligence cooperation are described and analysed and both the drivers of intelligence cooperation and the challenges to intelligence cooperation are analysed. Best practices are identified and proposals made to improve intelligence cooperation on the mentioned levels, in combating international crimes, including a high degree of cooperation between crime intelligence and positive intelligence.

Key terms: Intelligence, intelligence cooperation, intelligence coordination, intelligence fusion, crime intelligence, law enforcement cooperation, positive intelligence, regional intelligence cooperation, international crime.

OPSOMMING

ONDERWERP: Intelligensie en intelligensiesamewerking ter bekamping van internasionale misdaad: geselekteerde gevallestudies.

deur

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Hierdie studie fokus eerstens op die reaksie in die tydperk na die Koue Oorlog met die verskuiwing van die fokus van intelligensie na terrorisme, proliferasie van wapens van massavernietiging, en georganiseerde misdaad. Intelligensiesamewerking ten opsigte van internasionale misdade, insluitende ook huursoldatemisdade, seerowery en oorlogsmisdade, misdade teen die mensdom en volksmoord is geanaliseer, asook intelligensie oor vredesbewaring. Tweedens is die fokus op intelligensiesamewerking 'n reaksie op die gebeure van 11 September 2001 in die Verenigde State van Amerika, en intelligensiemislukkings ten opsigte van wapens van massavernietiging in Irak. Intelligensiesamewerking op die nasionale vlak is geanaliseer met verwysing na die Verenigde Koninkryk en die Verenigde State van Amerika; op streeksvlak met verwysing na die Afrika Unie, die Europese Unie en Suid-Oos Asië, en op internasionale vlak met verwysing na INTERPOL en die Verenigde Nasies. Internasionale-en streeksverpligtinge ten opsigte van intelligensiesamewerking is beskryf en geanaliseer en beide die faktore wat intelligensiesamewerking bevorder en strem is geanaliseer. Modelpraktyke is geïdentifiseer en voorstelle gemaak om intelligensiesamewerking op vermelde vlakke te verbeter ten einde internasionale misdade te bekamp, insluitende 'n hoë vlak van samewerking tussen misdaadintelligensie en positiewe intelligensie.

Sleuteltermes: Intelligensie, intelligensiefusie, intelligensiekoördinerings, intelligensie-samewerking, internasionale misdaad, misdaadintelligensie, positiewe intelligensie, streeks-intelligensiesamewerking, wetstoepassingssamewerking.

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