CHAPTER 7

MODELS FOR INTELLIGENCE COOPERATION ON THE REGIONAL LEVEL

1. INTRODUCTION

In the previous chapter, models of intelligence cooperation on national level were discussed and analysed. In Chapter 3 Europol, ASEANAPOL, the ACSRT, SARPCCO and CISSA were referred to within the context of the legal basis on which each organisation had been established, and international obligations in respect of information and intelligence sharing and intelligence cooperation. Each of these models is of particular importance within the context of regional intelligence sharing and cooperation. Furthermore, it is important to establish whether some of the principles in respect of enhancing intelligence and intelligence cooperation, including the sharing of information and intelligence on national level, can be applied in respect of regional cooperation. As a result of the principle of sovereignty and self-interest of states, which are major factors inhibiting intelligence cooperation, the regional level of cooperation is of particular importance, in view of the fact that within particular regions there are numerous factors, such as common threats, common economic interests and common borders to protect, which to some extent diminish the influence of sovereignty.

In this chapter the focus is on practical intelligence cooperation, and how factors inhibiting intelligence cooperation are addressed in furthering common interests. Within the EU, the open borders and consequent freedom of movement for people and goods provide unique opportunities for the commission of crime, and

requires measures to ensure that jurisdiction of the respective countries is not abused in the commission of crime. Each region has its own challenges in terms of intelligence cooperation with diverse forms of government and legal systems, different policing and intelligence structures and diverse capacities. In this chapter different models of crime and civilian intelligence cooperation on the regional level are discussed and analysed with a view to determine common approaches between national and regional intelligence cooperation and also the relationship between national and regional intelligence cooperation. The first model of regional crime intelligence cooperation is Europol.

2.   INTELLIGENCE COOPERATION: THE EUROPEAN POLICE OFFICE MODEL

Europol is described as a regional supranational body with the intended objective to "produce and diffuse 'finished intelligence' derived from the compilation and analysis of national law enforcement authorities" of the countries participating in Europol (Gerspacher, 2005: 414, 419). The personnel strength of Europol is as follows: 124 liaison officers; 461 Europol staff and 37 national and seconded experts, trainees and contractors (Europol, 2009(a): 42). Officers working at Europol come from diverse law enforcement backgrounds, including police, border guards, customs and intelligence services, affording a multi-lingual and multi-cultural approach conducive to a swift and efficient exchange of information to and from Europol and Member States (Saccone, 2006: 6). The main outstanding features of Europol are the following: (Saccone, 2006: 2, 6 – 8)

—   Europol established a network of liaison officers from national units, stationed at Europol and linking the national units to Europol, focusing on swift exchange of information on serious crimes committed transnationally, such as drug trafficking; human trafficking and illegal migration; fraud; Euro counterfeiting; commodity counterfeiting and money laundering. The network is further strengthened by the presence of liaison officers from

other cooperating countries with which Europol has cooperation agreements, such as Norway, Switzerland and the US.

— A strong analysis function enabling the receipt, storage, processing and production of strategic assessments and operational support for ongoing investigations. This function is supported by some 100 analysts from the different countries.

— Three computerised systems, namely firstly an information system to check suspects in investigations on serious crime and terrorism in the EU, which is the largest database on organised crime available to law enforcement in the EU. The second system is the analysis system which supports the reception, storage processing and analysis of information and intelligence gathered during criminal investigations. Access to the system is restricted and is used for the analysis work files (AWFs), described as a legal tool that creates a platform for a safe and well regulated sharing of criminal information and intelligence on ongoing cases. The third system is the index system aimed at "querying the presence of entities stored in the analysis system", in other words serving as a search engine.

— Expertise developed by Europol for the detection, dismantling and analysis of illicit laboratories for the production of synthetic drugs.

The EU Ministers agreed in 2005 on a European Criminal Intelligence Model (ECIM) (EU, 2004). This model is to a large extent based on the principle of intelligence-led policing, also referred to in the previous chapter as the basis of a system of intelligence cooperation in both the US and the UK. Intelligence-led policing is described as a law enforcement theory "that stresses intelligence gathering and the targeting of police resources on the worst criminals". The ECIM, which forms the basis of crime intelligence cooperation within the EU and more specific Europol, is described in more detail hereunder.

2.1. European Criminal Intelligence Model

ECIM sets out how the different police forces in the EU can plan investigations together using the best intelligence available, by ensuring that national police forces, Europol's intelligence analysts and the police chiefs' operations work together against the same criminal threats (Brady, 2008: 103). The law enforcement agencies of Member States of the EU have direct access to the central computerised system provided for in the Europol Convention. In line with the intelligence-led approach, security operations in the EU are increasingly relying on information technology, such as converting close circuit footage of covert surveillance of a suspect into data in respect of persons and vehicles (with identification), which data is then analysed against other data and criminal records (Segell, 2004: 83). Practical access to information by law enforcement agencies in the EU is based on the EU Information Policy, adopted during 2004, which also sets out the broad concepts for the introduction of intelligence-led law enforcement in the EU region (EU, 2004: 3). Member States are called upon in the EU Information Policy to make available to law enforcement agencies the relevant 'data and information', which is defined in the EU Information Policy as 'data, information and intelligence', to prevent and combat not only terrorism, but also other forms of serious or organised crime and threats related thereto. In the process it must be taken into account that criminal activity which might at first glance not be regarded as serious or organised could be connected to or related to serious or organised crime. Member States are expected to also produce high quality EU criminal (crime) intelligence and must enhance trust between the law enforcement services.

Of particular importance is that the EU Information Policy is aimed at improving information exchange between police authorities as well as between customs; authorities; financial intelligence units; the interaction between the judiciary and public prosecution services, and all other public bodies "that participate in the process that ranges from the early detection of security threats and criminal

offences to the conviction and punishment of perpetrators" (EU, 2004: 4). The EU Information Policy set as aim to expand the access that law enforcement agencies have to their national databases, to having equal access to equivalent rights of access to data and databases of EU Member States on comparable conditions as law enforcement authorities in that Member State. This principle of equal access implies a recognition of a common responsibility towards the security of the EU, interdependency of Member States to address threats and crimes of a serious and organised nature; the similarity of the tasks of law enforcement in all the countries, which requires equal access; and lastly that these agencies need to act lawfully in accessing data or databases within set boundaries of common standards, data protection and data security (EU, 2004: 7). In respect of an intelligence-led model of policing for the EU, the need to use standard analytical tools to produce a crime threat analysis for the region in respect of serious and organised crime has been identified. This threat analysis must be used to develop priorities from the operational assessment in respect of specific desired outcomes such as arrests, searches, seizing and forfeiting of assets derived from criminal activities (EU, 2004: 11).

The EU Information Policy emphasises the introduction of common standards on data access and processing as well as compatible methodologies related to threat, risk and profile assessments as a basis for effective sharing of information and intelligence at strategic as well as operational levels. This is also crucial to establish a trusted information environment (EU, 2004: 12). In Chapter 3, reference has already been made to the Europol EU Organised Crime Threat Analysis and the EU Terrorist Threat Analysis, which form the basis of Europol operations. The EU Information Policy strengthens the role of Europol in the sharing of data and information. This policy seems to have rendered positive results as police in EU Member States on the operational level now view Europol more favourable as a useful channel for coordinating the combating of organised crime, as well as appreciating the value of pro-active cross-border police cooperation (Brady, 2008: 104). Europol is unique as a regional police

organisation as to the degree of 'independence', not only in respect of intelligence cooperation, sharing and analysis, but also operationally- through Joint Investigation Teams (JITs), as referred to in Chapter 3, as well as the flexibility of some national police forces to work across borders within the EU, with less bureaucracy involved than would normally be the case between different states. Joint criminal investigations and operations of Europol are discussed hereunder to illustrate the degree of operational flexibility of Europol.

2.2. Criminal investigations and operations of the European Police Office

Following reluctance by Member States of the EU to participate in JITs, the European Council established an informal JITs Experts Network, to come into operation by September 2005. The JITs Network required each state to designate one or more expert to it (all Member States have done that); that the Network must meet informally and regularly in smaller groups; national experts must liaise with other persons and organisations within their Member States to provide information and advice from that Member State; and national experts to the JITs must share best practices with the group (EU, 2005: 2). The JITs furthermore provide information about the legal frameworks in the respective Member States, the national contact points as well as assist to overcome linguistic problems. Intelligence and operational investigative support and involvement of Europol covers a wide range of crime, not only organised crime and terrorism.

At the most recent annual meeting of the JITs experts a manual was produced in which guidelines are provided on how to set up a JIT (Europol, 2009(a): 51). Some of the most recent operations involving Europol are the following: (Europol, 2009(a): 18, 19, 24, 25)

— Operation Hammer, dealing with child abuse, including child sexual abuse on the Internet, where Europol provided an initial intelligence package,

assisted in identifying suspects and coordinated meetings. Operation Hammer led to the arrest of 60 offenders and the rescue of 11 child victims of sexual abuse. Operation Hammer also involved various US law enforcement agencies, including the FBI.

— Operation Pipas, targeting an international credit card fraud network. Europol provided strategic and operational analysis coordination to the Spanish National Judicial Police as well as providing a mobile office. The successes of Operation Pipas included the arrest of 99 criminals, the dismantling of an international credit card fraud network, and the seizure of € 6 million of profits derived from crime.

— Operation Decan, targeting skimming fraud (*inter alia* obtaining credit card particulars and codes to fraudulently obtain money from credit card accounts). Europol provided strategic and operational analysis, a mobile office, coordination and video-conferencing services. The successes of Operation Decan included 15 criminals arrested, 34 houses searched, investigations and prosecutions in eight EU Member States, as well as Australia and Canada, and an international credit card fraud network dismantled.

— Operations Trufas and Baghdad, targeting human trafficking. Europol provided assistance through exchange and analysis of information, and intelligence reports and identified new criminal links. Operation Trufas resulted in the arrest of 65 suspects, and Operation Baghdad in the arrest of 75 suspects, in both cases throughout Europe. Both operations led to the dismantling of a Europe-wide human trafficking network.

A major legal instrument towards the facilitation of criminal investigations across national borders, is the *Council of Europe Convention on Mutual Assistance in Criminal Matters*, updated in 2009 by the Council of Europe to also include requests for undercover operations abroad; the interception of phone and internet communications across borders; and surveillance operations to secretly monitor crimes such as drug trafficking; and performance of controlled deliveries (Brady,

2008: 104). As mentioned above, the combating of crime in the EU is greatly enhanced through JITs, on a more frequent and practical level through operational flexibility to act across national borders of the EU. This is in particular true in respect of the Schengen countries, where police forces have extra powers to pursue crimes with a cross-border dimension. Examples in this regard are: (Brady, 2008: 105)

— The power of Dutch police officers to perform surveillance, with or without prior notification, in Belgium;

— the power of Italian police officers to follow a suspected drug trafficker over the border into Austria, until the Austrian police arrive; and

— before the 2006 FIFA Soccer World Cup, Germany and Austria signed a treaty placing their police under each other's command and allowing police officers of each others countries unrestricted undercover operations in the other's territories.

Europol also provides analytical support to the Comprehensive Operational Strategic Planning for Police (COSPOL) Project of the European Police Chiefs Task Force (EPCTF). The EPCTF initiated the COSPOL Project, a multilateral law enforcement instrument to improve operational results in respect of top criminals and terrorist networks and to provide support and strategic planning; coordination and communication between all relevant partners (Saccone, 2006: 9). The operations which are launched in terms of the COSPOL Project are mainly derived from the Europol Organised Crime Threat Analysis (OCTA) (EU, 2008(a): 1). From the above, it is clear that Europol is not the only role-player in respect of crime intelligence, joint investigations and joint operations on the regional level in the EU. The operational role of Europol is important to assess the organisations' practical value in respect of crime intelligence cooperation.

2.3. Operational role of European Police Office: Exchange of information

Some 124 397 searches were performed on the Europol Information System during 2008 and at the end of 2008, the Information System contained 88 419 objects (Europol, 2009(a): 35). Data is deleted automatically after three years, but the information system has started to grow at a rate where the additions to it are more than deletions. Hits or matches produced by the information system have grown in a year from 86 to 140 (Europol, 2009(a): 36). Europol also has an important strategic role which needs to be highlighted.

2.4. Strategic role of European Police Office

The intelligence products of Europol include the Europol OCTA and the EU Terrorist Situation and Trend Report (Europol TE-SAT). These reports are presented to the EU decision-makers and are important in terms of strategic direction and focus of resources (Europol, 2008(b)) (Europol, 2009(b)). Europol's value is hugely enhanced by other European partners, which are mentioned hereunder.

2.5. European Police Office and other European partners

Eurojust is a new EU body and the first network of judicial authorities to be established in the world. Eurojust had been established to enhance the effectiveness of the competent authorities in the Member States in dealing with the investigation and prosecution of serious cross-border and organised crime. Eurojust facilitates the execution of requests for mutual legal assistance and extradition between Member States (T.C.M. Asser Instituut, 2009: 5). Europol and Eurojust have cooperated in a number of cross border investigations, by using Eurojust to supplement the investigative actions of JITs with mutual legal assistance and extradition requests to ensure successful prosecutions. Another

important European partner of Europol is the European Agency for the Management of Operational Cooperation at the External Borders of the (EU) Member States (Frontex), with which Europol had concluded a strategic agreement. Frontex is based in Warsaw. It is an independent organisation tasked to coordinate operational cooperation between EU Member States in respect of border security, and operates on an intelligence-driven basis. Its purpose is described as the coordination of operational cooperation at EU level to strengthen security at external borders. It is a key player in implementing the concept of an EU Integrated Border Management (Frontex, 2009: 1).

The exchange of strategic intelligence between Europol and Frontex for intelligence products has increased, and whilst Frontex contributed during 2008 to the Europol OCTA, Europol in turn contributed to the Frontex Annual Risk Assessment. Europol has also signed cooperation agreements with all the countries of the Western Balkans, namely Serbia, Montenegro and the Former Yugoslav Republic of Macedonia. Europol has operational agreements in place between the following states: Australia; Canada; Croatia; Iceland; Norway; US, and operational agreements with Eurojust and INTERPOL. Europol has strategic agreements with Albania; Bosnia and Herzegovina; Colombia; Moldova; Russian Federation; Turkey and the Former Yugoslav Republic of Macedonia; as well as strategic agreements with the European Anti-Fraud Office (Olaf); European Central Bank (ECB); European Monitoring Centre for Drugs and Drugs Addiction (EMCDDA); European Police College; United Nations Office on Drugs and Crime (UNODC); World Customs Organisation (WCO) and Frontex (Europol, 2009(a): 52). It is necessary to explore the difficulties or challenges experienced by Europol on the practical level, to determine the value of the Europol model.

2.6. Challenges experienced by European Police Office

Although improved intelligence work and "having officers from 27 European countries on the same corridor in The Hague is an unparalleled resource in day-

to-day police cooperation", there are major challenges still facing Europol (Brady, 2008: 107). Contributions by Member States to the Europol OCTA remains varied and from some countries almost absent. Officers designated by Member States are in some instances unauthorised in their national jurisdiction to resolve cross-border issues, with resultant negative effects on trust building and the strengthening of cooperation in international investigations. On the level of prosecutors there is also a disparity between the Member States of the EU in respect of the basic powers to issue formal requests for evidence and to authorise controlled deliveries, interception of communications and undercover operations (Brady, 2008: 107, 108).

The level of bureaucratic stumbling blocks, emanating from Europol's founding Convention in that even minor administrative decisions by the Europol director require approval of all 27 Europol Member States. New envisaged EU legislation is, however, to provide wider investigative powers to Europol, covering more crimes, cause Europol to be less bureaucratic and have more freedom to gather intelligence and information like DNA data. The following reforms have been proposed for Europol to address full police cooperation: (Brady, 2008: 108)

— Harmonisation of the different roles of police and prosecutors in the respective Member States.

— Harmonisation of the powers of officers designated to Europol by the respective Member States.

— Merging Europol, Eurojust and the EPCTF to form a single European law enforcement coordinating body. Eurojust and Europol are reported to co-locate in 2009. Advantages of such a merger include the prevention of duplication in intelligence gathering and analysis and a better "follow through from investigation to prosecution in cross-border cases".

It is not known whether the co-location of Europol and Eurojust will indeed take place, but a new agreement between the two organisations, with the objctive to "enhance the cooperation between Eurojust and Europol in fighting serious forms

of international crime" was concluded on 1 October 2009. The new agreement provides for the exchange of information, and the establishment of JITs composed of judicial authorities and law enforcement authorities in the EU upon request of Member States. In respect of the role of Europol, it is stated that: "When it is decided to participate in such a team, Europol shall endeavour to bring its support in order to facilitate co-ordination between the judicial authorities concerned and Europol shall endeavour to support the intelligence gathering and investigative efforts of the team" (Europol, 2009(c).

It had also been suggested that Europol second Europol experts in specific regions to assist law enforcement initiatives run by different Member States. The role of Europol should also be clearly defined in relation to the other EU law enforcement and intelligence agencies, in order to avoid duplication of efforts and potential for competition. Such defining of roles should be part of a: (Saccone, 2006: 12)

> structured reflection on the overall architecture of the security approach in the European Union, with a clear definition of tasks and functions of each EU agency, the description of the interaction amongst the various agencies and the technical, legislative and procedural conditions that need to be put in place to achieve the interoperability of the various computerized systems.

The above dealt with crime intelligence cooperation in Europe, through Europol. Intelligence cooperation in respect of military and civilian intelligence is also of importance, especially to compare the models in respectively Europe and Africa. In Chapter 3 some reference was made to institutions for intelligence cooperation such as the Club of Berne, NATO and the European Union Military Staff. In the following sub-section, intelligence sharing in the EU in respect of military, crime and civilian intelligence is reflected upon, in order to indicate possible solutions to

one of the main factors inhibiting intelligence sharing and cooperation, namely mistrust.

2.7.   Intelligence sharing and cooperation in the European Union

It is clear that the expansion of the EU led to a much greater demand for intelligence to combat international crime. At the same time the expansion led to a lack of trust, especially with the joining of the EU of what was previously referred to as East bloc countries and now 'emerging democracies'. In the reform process of the intelligence services of emerging democracies in these (former East bloc) states, extensive vetting was undertaken to purge intelligence services from what is referred to as "legacy personnel". This led to a huge cut in the personnel of intelligence services in these countries, in some instances also resulting in a loss of expertise. The vetting was only partial successful as many of the personnel who were found unsuitable for further employment in intelligence services, were redeployed in departments where vetting was no requirement, but where they might have access to intelligence. In addition factors such as corruption; personal vendettas; unfair legal processes; the manipulation of the vetting process by experienced intelligence personnel being vetted; and a lack of complete records played a negative role in the early "post-communist personnel vetting processes" (Watts, 2001: 21 -23).

The intelligence sharing institutions of the EU, in addition to the crime intelligence sharing institution (Europol), discussed above, are: (Walsh, 2009: 7, 8, 9, 10)

— In respect of civilian intelligence, the Berne Group or Club, referred to in Chapter 3, has expanded from six to twenty-seven members, including all EU Member States. It serves as a principle point of contact between the heads of national security (intelligence) services, meeting regularly. The Berne Club produces, through cooperation between Member States as well as the US, common threat assessments that are shared amongst

Member States. The Berne Club has established working groups on terrorism and organised crime and also the Counter Terrorist Group.

— In respect of military intelligence, the EU Military Staff is of importance for intelligence sharing to support the Military Committee and the Political Security Committee. Each Member State seconds at least one representative to the Intelligence Division of the Military Staff numbering 30. These staff members' functions are similar to that of the experts seconded to Europol, namely to serve as conduit for intelligence between the EU and Member States. Intelligence from Member States as well as intelligence gathered by bodies of the EU are used to produce assessments for the Military Committee. Together with the SitCen referred to in Chapter 3, intelligence products include early warning, intelligence assessments, and operational support on external security matters, including terrorism.

Although NATO as organisation had been established for defence cooperation between countries of the EU as well as the US, it plays a significant role in EU intelligence cooperation, as NATO is involved in a number of military operations, including naval operations to combat maritime piracy in the Horn of Africa. During 2008, NATO was requested by the Secretary-General of the UN to provide naval escorts to UN World Food Programme vessels transiting in the Gulf of Aden and the Horn of Africa firstly under Operation Allied Provider and since March 2009 under Operation Allied Protector. The NATO naval force is described as a multinational integrated maritime force made up of vessels of various allied countries and is permanently available to NATO to perform different tasks including operational intervention (NATO, Undated(a)). NATO, in the Alliance's Strategic Concept, underlines its support for arms control, disarmament and non-proliferation of WMD, as playing a major role in its security objectives (NATO, 1999: par 40). NATO is also committed to combating terrorism and is linked by various cooperation agreements with the EU (NATO, 2009). Intelligence activity represents an inherent element of NATO, which was established as a security

and political organisation (Črnčec, 2009: 155). NATO had been involved in peacekeeping operations in Yugoslavia, Bosnia and Herzegovina, the Darfur region of the Sudan (airlift rotations in support of the AU mission in Darfur) and is still involved in the peacekeeping mission in Kosovo. It is presently also involved in military operations in Afghanistan through the International Security Assistance Force. In the Mediterranean, NATO performs a critical counter-terrorist function in respect of surveillance and the boarding of suspect ships (NATO, Undated(b)).

None of the institutions referred to above, including Europol and NATO has rules that force Member States to share intelligence with each other, nor any mechanism to monitor non-compliance or non-sharing of intelligence. Neither NATO nor the EU has an intelligence service of its own (Črnčec, 2009: 156). Operational and 'sensitive' intelligence is seldom shared in the EU (Walsh, 2009: 13). Intelligence sharing is promoted through the practice of masking the origin and source of the intelligence, for example in reports of the Intelligence Division. However, few (seven) of the Member States have foreign intelligence services, which makes it possible to sometimes derive from the type of intelligence, the source thereof. The Intelligence Division seldom receives 'raw intelligence' from Member States (Walsh, 2009: 15). As pointed out in Chapter 4, mistrust remains a factor which inhibits multilateral sharing of intelligence. Mistrust is probably the reason why the integration of intelligence, in other words a single EU intelligence institution, which had been proposed in the past by countries such as Belgium and Austria is problematic (Walsh, 2009: 20). Despite the huge advances made in the EU with the sharing of crime intelligence through Europol, there is still, in respect of Europol, the Berne Club and the EU Military Staff, no obligation regarding the sharing of intelligence, with the result that shared intelligence seldom includes 'raw intelligence', and that intelligence shared is voluntary and contains no 'sensitive' information (Walsh, 2009: 13, 15). Self-interest, as pointed out in Chapter 4 also plays a huge role in this regard and it is stated that: "(Intelligence) Liaison relationships are pay-as-you-go propositions, and no nation is given a free ride on anything but a temporary basis" (Rosenau, 2007: 4).

As with intelligence sharing on national level between intelligence agencies, described in Chapter 6, mutually beneficial intelligence cooperation between countries within a regional context requires that some autonomy should be forfeited. At the same time the regional organisations should be capacitated to have enough powers to act in the interest of the region. As integration or the establishment of a regional intelligence agency with autonomous powers which would include collection of intelligence is highly improbable, the following has been suggested: (Walsh, 2009)

— To create more sophisticated networked databases, allowing the sender to post a description only of intelligence on the database, allowing others with access to the database to determine the value of the intelligence, without either having access to the sources or methods through which it was obtained, or having access to actionable details. The full intelligence report could then be obtained from the sender through a "mutually beneficial bargaining process".

— Some subsets or smaller groups of states within the broader EU could meet and cooperate amongst themselves as well as with other partners forming "multi-speed lines", simply meaning not all states participating in all cooperative ventures. The G5, namely Britain, France, Spain, Germany and Italy, is mentioned as such a nucleus of EU Member States with common interests and a high degree of trust among each other, which could provide a basis for being regarded as a group of "like-minded States" which could take the lead in enhancing intelligence cooperation in the EU. This is required because there is no single state in the EU which could take such a lead (Walsh, 2009: 35).

EU military commands responsible for individual, mostly crisis response operations, have a greater need for tactical and operational intelligence. This need is expressed as follows: The provision of appropriate permanent intelligence support is one of the key challenges of every crisis response

operation" (Črnčec, 2009: 159). An advantage of the G5 taking a lead in enhancing EU intelligence cooperation is the fact that: "(t)he United States regularly shares high-grade intelligence with the G5 countries … but appears much less willing to do so with other nations". Nevertheless, it is stated that the speed of exchange of intelligence between the US and the EU is a negative factor, in that neither the EU or NATO is "cut out for swift action- a key shortfall in the case of operational intelligence, whose utility is short-lived" (Rosenau, 2007: 9).

It is clear from the above that the Europol and EU models for intelligence cooperation have overcome many of the negative effects of sovereignty and mistrust. Especially joint police operations are valuable requiring effective and intensive operational intelligence sharing and cooperation in respect of particular projects or investigations of common interest. On the strategic level huge advances have been made with strategic intelligence products such as the EU OCTA and the Terrorist Trend and Threat Analysis. Although a European 'FBI', in other words an independent intelligence agency for Europe had been envisaged as an ideal, it will probably not realise in view of the sovereignty principle. Mistrust also remains a problem. There are proposals to overcome the problem of mistrust and the lack of an independent intelligence agency by means of special databases; and the clustering of Member States in smaller groups with common interests and a higher level of trust between them, such as the G5 to take the lead in enhancing regional intelligence cooperation. A multiplicity even in respect of regional crime intelligence agencies, such as Europol and the EPCTF is a further challenge which is addressed through an arrangement between Europol and the EPCTF called the COSPOL Project. A merger of Europol, EPCTF and Eurojust has been suggested. A further important characteristic of the EU model for crime intelligence cooperation is the cooperation between Europol and Eurojust, including prosecution and justice authorities to ensure successful investigations and successful prosecutions. In Chapter 5 reference was made to a similar arrangement between the US and the UK, which is

yielding positive results. Of importance within the Europol model is its links with both the national law enforcement agencies of EU Member States and through various cooperation agreements with organisations such as NATO, INTERPOL and various cooperative countries.

The following model for crime intelligence cooperation that will be discussed is the ASEANAPOL model in South East Asia.

3. INTELLIGENCE COOPERATION: THE ASSOCIATION OF SOUTH-EAST ASIA CHIEFS OF POLICE MODEL

The establishment, membership and functions of ASEANAPOL as well as its relationship (agreement) with INTERPOL have been discussed in Chapter 3. Little information is available on the actual operations and successes of ASEANAPOL. One example of regional cooperation through ASEANAPOL is Operation Storm, held jointly between ASEANAPOL, INTERPOL, the World Health Organisation, the World Customs Organisation and national authorities in Cambodia, China, Laos, Myanmar, Singapore, Thailand and Vietnam. It resulted in 30 arrests and the seizures of more than 16 million counterfeit medicines worth millions of US dollars (Boon, 2009: 1). This can probably be ascribed to the fact that to date ASEANAPOL does not have a permanent secretariat. At the latest annual general meeting of the 10 ASEAN Member States with five dialogue countries (China; Republic of Korea; Japan; Australia and New Zeeland), as well as INTERPOL, some 330 delegates met from 12 to 16 May 2009, in Hanoi, Vietnam. It became clear that the establishment of an ASEANAPOL Secretariat is imperative, to enhance coordination and cooperation between Member States and to ensure proper and effective implementation of resolutions adopted during the respective annual general meetings. A working group discussed the establishment of an ASEANAPOL Secretariat during March 2009, and made recommendations to the abovementioned conference (Begawan, 2009: 1). During the May 2009 conference the terms of reference for the establishment of

an ASEANAPOL Secretariat, expected to start operating on 1 January 2010, were adopted and key appointments to the Secretariat approved. The ASEANAPOL Secretariat is based in Kuala Lumpur, Malaysia. The conference also approved the implementation of proposals to strengthen cooperation with dialogue partners. The specific proposals included a proposal from Japan to establish a shared database of websites on terrorism (Othman, 2009: 4). In Chapter 3 the broader ASEAN regional structures were described. It is clear that within the ASEAN structures, positive intelligence is shared between the Member States, in addition to the sharing of crime intelligence within ASEANAPOL.

It is clear that ASEANAPOL is still developing, but is following on the African model discussed hereunder and it is expected that its links with INTERPOL and the establishment of a permanent secretariat, will soon lead to increased crime intelligence cooperation and joint transnational police operations to combat international crime.

The following model for intelligence cooperation, mainly in respect of the combating of terrorism, is that of the ACSRT, in Algiers, Algeria.

4.   CIVILIAN INTELLIGENCE COOPERATION ON THE AFRICAN CONTINENT

There are two institutions in Africa responsible for the promotion of intelligence cooperation on the African Continent, namely the ACSRT and CISSA, both focused on civilian intelligence, although the products of the ACSRT are also of importance for law enforcement. ACSRT is firstly discussed.

4.1.   The African Centre for the Study and Research of Terrorism

ACSRT was established in September 2002, in Algiers, Algeria, and inaugurated on 13 – 14 October 2004. ACSRT originated from the Plan of Action of the AU

High Level Inter-Governmental Meeting on the Prevention and Combating of Terrorism held from 11 to 14 September 2002. The formal structuring of ACSRT was enabled by the *OAU Convention on the Prevention and Combating of Terrorism (Algiers Convention)*. As mentioned in Chapter 3, the *AU Non-Aggression and Common Defence Pact* provides for the establishment of the ACSRT to centralise, collect and disseminate information; studies, and analysis on terrorism and terrorist groups, provide training programs and assist Member States to develop expertise and strategies for the prevention and combating of terrorism. The Parties to the Pact are obliged to support and actively participate in the activities of the ACSRT (AU, 2005(a): Article 13). The intelligence functions of ACSRT include the following: (ISS, 2009(a))

— Assist Member States of the African Union in developing strategies for the prevention and combating of terrorism.

— Develop and maintain a database on a range of issues relating to the prevention and combating of terrorism, particularly on terrorist groups and their activities in Africa, as well as on experts and technical assistance available. This database that will include analysis, will be accessible to all Member States.

— Initiate and disseminate research studies and policy analysis periodically to sensitise Member States, based on the current trends and/or the demand of the Member State(s).

— Develop capacity for early warning to encourage early response, integrating the concept of Preventive Management of crisis.

Once again, as mentioned in Chapters 3 and 4, within SADC and the AU confusion between early warning and warning intelligence seems to exist and warning intelligence seems to be wrongly included in the concept of 'early warning'. At the head of ACSRT is a Director reporting to the Chairperson of the Commission of the PSC, as ACSRT was established as a structure of the PSC of the AU. The Director must submit an annual report on ACSRT activities to the said Chairperson, to be considered by the policy organs of the AU. The Director

is assisted by a Deputy Director. The respective units of ACSRT are the following: (ISS, 2009(a): 9)

— The Training and Equipment Unit, responsible for organising workshops, seminars, symposiums and training programs to enhance the capacity of Member States of the AU to combat terrorism, amongst other fields in investigation; analysis and operational use of information; crime scene and forensic training; and training on the combating of terrorist financing. This Unit's functions include the distribution of surveillance equipment, equipment to detect explosives; equipment to detect forgeries as well as specialised software.

— The Alert and Prevention Unit, which has to sensitise Member States on current trends through research initiated and performed and the results disseminated by the ACSRT or upon demand by Member States. The Alert and Prevention Unit is also charged with research on converging studies on other global security challenges with links to terrorism which pose a threat to peace and security in Africa.

— From an intelligence point of view, the Data Bank and Documentation Unit can be considered as the most important. This Unit is responsible for establishing operating procedures for information gathering, processing and dissemination; the development of a databank on issues relating to the combating and prevention of terrorism, and to develop strategies to counter terrorism.

The ACSRT and the Member States of the AU interact through National and Regional Focal Points, established within the Member States and the Regional Economic Communities. The national focal points' function is to facilitate the timely exchange and sharing of information on terrorist groups and their activities on regional, continental and international levels. The ACSRT must also cooperate and develop partnerships with similar centres and other institutions involved in counter-terrorism on national, regional, continental and international levels. In this regard the EU offered its support to ACSRT to strengthen

cooperation between the two institutions, in particular through the exchange of information. The EU also undertook to provide financial support to ACSRT (EU, 2008(b): 1). ACSRT also received recognition from the UN, within the context of the new approach of the US to the combating of terrorism, as adopted by US President Obama, by "fostering a climate which is more favourable to the United Nations Strategy's emphasis on addressing the political and economic conditions that have been conducive to the spread of terrorism". It is further recognised that Africa had been the first region in the world to develop a regional counter-terrorism framework, which includes the ACSRT "to help foster regional approaches to countering terrorism." (UN, 2009(d): 1).

The AU and the ACSRT are prompted by the UN to continue to take the lead in raising awareness of the threat (of terrorism) and stimulating more information-sharing and capacity building activities on the African continent (UN, 2009(d): 1, 2). The following view has been expressed regarding UN/AU cooperation: (UN, 2009(d): 2)

> Turning to the United Nations engagement in Africa on issues of terrorism, the experts emphasized that implementation of the United Nations Global Strategy should also reflect a "bottom-up" approach, rather than being dictated by stakeholders in New York or other United Nations centres. This could be done, a number of experts suggested, through greater information sharing, more field missions and United Nations sponsored programmes for building African capacities and additional efforts to bring African voices to the work of the Security Council's Counter-Terrorism Committee and other New York initiatives.

From the above it appears as if the ACSRT is functioning more on a strategic/policy level, and not on the operational level, but that it could play an

important role with international partners to build the capacity of Member States of the AU to effectively counter terrorism.

Another organisation on the African Continent in respect of intelligence cooperation, and in particular civilian intelligence, is CISSA, discussed hereunder.

4.2. The Committee of Intelligence and Security Services of Africa

CISSA's establishment resulted from a meeting of intelligence agencies from various African countries that was held in Luanda, Angola, following the unsuccessful *coup* attempt in Equatorial Guinea (EG) in 2004. The purpose of the meeting was to discuss the rise of mercenarism in Africa (ISS, 2003 – 2006). It is understandable that the aborted *coup* had a profound effect on intelligence cooperation. Countries on the African continent have been ravaged by *coups* and *coup* attempts. Between 1964 and 2004, there had been 80 successful *coups*, 181 failed ones and an unknown number of *coup* attempts in African countries. Between 1995 and 2004 there was a marked increase in *coup* attempts in Africa (Ngoma, 2004: 87). The *coup* in the EG followed the classical pattern of many other *coups* in Africa, with ex-special forces mercenaries (Nick du Toit, ex-32 Battalion soldier, and Simon Mann, ex-Special Air Services soldier); a foreign sponsor (Sir Mark Thatcher, and allegedly Eli Calil); and an exiled politician (Severo Moto). The *coup* plot was foiled with the arrest of Nick du Toit and 18 other persons in Malabo, the capital of EG; and the arrest of a further 70 mercenaries on the airport in Harare, Zimbabwe where they were going to buy and load the arms and ammunition to execute the *coup*. Apparently the UK intelligence services were aware of the intended *coup*, months before the planned execution thereof, but did not alert the EG authorities (Sourcewatch, 2004).

Following preparations by a Commission of Experts, a *Memorandum of Understanding* was drafted setting out the procedures for Member States to join CISSA. Subsequently almost all AU Member States have signed the *Memorandum of Understanding*. As mentioned in Chapter 3 the Assembly of the AU endorsed the establishment of CISSA in Abuja, Nigeria on 26 August 2004 and directed that an Intelligence and Security Committee located in the Office of the Chairperson of the AU Commission shall be created for that purpose (AU, 2005(b). CISSA is fully functional and as also mentioned in Chapter 3, developed a Continental Threat Assessment which is updated annually and which identifies key intelligence priorities. Furthermore an Africa-wide secure communications system between the CISSA headquarters and Member States' services to facilitate intelligence exchange and interaction was established (Kasrils, 2008: 4).

CISSA was established to "carry out functions to enhance continental intelligence cooperation aimed at providing the AU, especially its PSC with data and intelligence necessary for the forecasting of future evolution and resolution of seemingly intractable conflicts that continue to threaten the stability of Africa" (AU, 2009: 1).

Membership of CISSA is open to all intelligence and security services of all African countries. It is composed of three permanent bodies, namely the Conference, which is composed of heads of intelligence and security services of Members of CISSA; the Panel of Experts, composed of the representatives from Members of CISSA, and the Secretariat based in Addis Ababa and staffed by officers recruited from intelligence and security services of Members of CISSA based on the principle of equitable regional representation. The vision of CISSA is set out as follows: "To be the primary provider of intelligence to the policymaking organs of the African Union, thereby strengthening its capacity to deepen and preserve stability in Africa" (AU, 2009: 1).

The mission of CISSA is stated as follows, namely "(t)o coordinate intelligence as well as promote cooperation, confidence building measures and capacity building among intelligence and security services of Africa" (AU, 2009: 1). In addition, CISSA's role and functions include providing a platform for cooperation with similar organisations outside Africa; to provide a back channel (in other words a secret, secure and supplementary channel) for communicating highly sensitive issues; and to enhance the development of an endogenous African Security Doctrine (ISS, 2006 – 2009: 3). The first executive secretary appointed to CISSA is Dennis Dlomo of the South African Secret Service (ANC, 2006). CISSA is certainly unique in the sense that it fosters cooperation between the civilian intelligence services of the whole African continent within the folds of the AU. Whilst CISSA is involved in the cooperation and coordination of civilian intelligence activities on the African continent, the issue of police cooperation and in particular crime intelligence cooperation in Africa, is of importance in respect of the combating of international crime.

CISSA is unique in the sense that it joins such a huge number of countries on the continent under one umbrella to enhance intelligence cooperation. In addition to civilian intelligence cooperation on the African continent, the model for crime intelligence cooperation in Africa is unique and needs to be described in more detail.

5.   REGIONAL POLICE AND CRIME INTELLIGENCE CO-OPERATION IN AFRICA

Police cooperation structures in Africa provide a model of regional cooperation which could be used to globally structure regional police and crime intelligence cooperation. During the opening of the 29th ASEANAPOL Conference in May 2009, the President of INTERPOL remarked that: "INTERPOL has already seen great results from the strong cooperation between regional police chiefs' bodies in Africa and its Regional Bureaus on the (African) continent, so I encourage all

of you to make use of this valuable resource" (Hui, 2009: 4). In Chapter 3 police cooperation within the Southern African Region was discussed, providing some detail on SARPCCO – its legal basis, structures, and operations. INTERPOL has seven Regional Bureaus, of which four Regional Bureaus are based in Africa, operating from:

— Harare, Zimbabwe, serving Southern Africa and linked to SARPCCO;

— Nairobi, Kenia, serving East Africa and linked to the East African Regional Police Chiefs Cooperation Organisation (EAPCCO);

— Abidjan, Côte d'Ivoire, serving West Africa and linked to the West African Police Chiefs Cooperation Committee (WAPCCO); and

— Yaoundé, Cameroon, serving Central Africa and linked to the Central African Police Chiefs' Committee (CAPCCO).

The above Regional Bureaus of INTERPOL are serving as the permanent secretariats for the respective organisations mentioned above, providing a unique link in respect of secure communications, operational cooperation and coordination as well as direct access to INTERPOL databases and services. These Regional Bureaus have been updated and modernised since 2005, involving standardised working equipment, installation of video equipment and telephone facilities, and access to INTERPOL's Intranet and message handling system, which has speeded up the sharing of information and effectiveness among Regional Bureaus, National Central Bureaus and the INTERPOL General Secretariat (INTERPOL, 2009(j)). The respective police cooperation organisations in Africa are discussed hereunder with reference to the international crimes they focus on, the exchange of information and interaction between the respective organisations and INTERPOL. Although SARPCCO has been discussed in Chapter 3, in respect of its establishment, structures and cross-border operations, some of the latest developments in respect thereof are pointed out.

5.1. Southern African Regional Police Chiefs Cooperation Organisation

SARPCCO previously remained independent from the SADC structures, such as the Organ on Politics, Defence and Security Cooperation. In 2007, a decision was ratified by SADC Summit to bring SARPCCO "squarely under the mantel of SADC" (Van der Spuy, 2009: 245). The process of incorporating SARPCCO into SADC structures has made good progress (SARPCCO, 2009: 4). SARPCCO is dependent on Member States' contributions for cooperative ventures and although it has been successful in accessing funding from non-governmental organisations and third parties, the opinion had been expressed that it is curtailed by the absence of a dedicated budget, also in respect of the training needs of the Southern African Region (Van der Spuy, 2009: 245). The joint operations of SARPCCO in respect of the destruction of armament as a legacy of civil wars in the region as well as some other joint operations have been discussed in Chapter 3. SARPCCO in the past year focused on a variety of projects which relates to transnational crime: Project Diamante to combat crimes related to precious stones; Project Signal to establish an early warning mechanism on terrorism; and Project White Flow to combat trafficking of cocaine (SARPCCO, 2009: 5). SARPCCO also participated in the INTERPOL project to capacitate police agencies through the Operational Assistance Services and Infrastructure Support (OASIS) Africa.

A key activity of Project OASIS Africa is to provide training and tools in crime analysis, focusing on the threats to the African region of organised crime (such as stolen motor vehicles, and trafficking in human beings, drugs and illegal firearms; international terrorism and public corruption). The program is aimed at providing law enforcement officials in Africa extended access to INTERPOL's global secure communications network (I-24-7) and operational databases. In the process the mobile/fixed INTERPOL network database (MIND/FIND), also described in Chapter 3, is rolled out from the National Central Bureaus to main border points to enable law enforcement officials to carry out instant checks

against stolen and lost travel documents databases and identify criminals. Investigative tools and *ad hoc* operational support are also provided through joint police operations targeted against high-priority crime areas.

Twenty African countries, for example participated across the African continent, with some 1 250 police officers trained in using the database and relevant investigative techniques – leading to the checking of 32 000 vehicles and the arrest of more than 300 persons. The German Government is funding Project OASIS Africa for four years (INTERPOL, 2009(k): 2). The effectiveness of the OASIS Project is notable from an example of a person holding a Pakistani passport and who visited South Africa during the Confederations Cup in 2009. He claimed to be a businessman. Upon control the passport was revealed to be part of a batch of 2 000 blank passports stolen in Pakistan in 2001 (Afrol News: 2009).

Another notable SARPCCO project is the Effective Research on Organised Crime Project (EROC). The Project has entered its second year and is aimed at studying the nature of organised crime in the Southern African Region, to track its incidence and to enhance the regional response to organised crime. The EROC Project is a joint venture between SARPCCO and the Institute for Security Studies (ISS). The EROC Project includes a newsletter, based on open source information and research, and has shifted to primary data collection and field research. The EROC Project has already indicated some trends in organised crime, such as the growth of domestic drugs markets; increases in armed robberies and motor vehicle theft; the trade in endangered species; natural resources exploitation; and offences relating to the smuggling of migrants (ISS, 2009(b): 1).

It has been pointed out above that within the EU crime intelligence cooperation is to some extent supported through cooperative agreements on mutual legal assistance and extradition agreements and cooperation between crime

investigators and Eurojust. Within the SADC region, cooperation agreements have also been concluded in this regard in the form of the SADC *Protocols on Extradition and Mutual Legal Assistance in Criminal Matters*, respectively (SADC, 2002(a)) (SADC, 2002(b)). SARPCCO does provide an operational cooperation mechanism with legal support in the SADC region, but not in so far as linking with prosecutors during investigations. This is an area which could probably be addressed when SARPCCO is fully integrated within SADC structures through cooperative efforts of the SARPCCO Legal Sub-Committee and the SADC Legal Sector. The Protocols, however, still provide for rather formal processes, which do not differ much from those applicable before the conclusion of the said two Protocols. In respect of extradition for example, the principle of non-extradition of a country's own citizens is recognised. Although this can be overcome through assistance to prosecute the person in the requested country, jurisdictional issues and the making available of evidence and witnesses to another country remain challenges.

A similar police cooperation organisation has been established in respect of the Eastern African Region.

5.2. East African Police Chiefs Cooperation Organisation

The following countries comprise the East African Region: Burundi; Djibouti; Eritrea; Ethiopia; Kenya; Seychelles; Somalia; Sudan; Tanzania; Uganda; and Rwanda. Tanzania is a member of both SARPCCO and EAPCCO. The Secretariat of EAPCCO is the Regional Bureau of INTERPOL in Nairobi Kenya. The Regional Bureau Nairobi and EAPCCO focuses on terrorism; cattle rustling; environmental crime; maritime piracy off the Somali coast; trafficking in human beings and illegal migration; trafficking in narcotics; financial hi-tech crime; trafficking in firearms and fugitive tracking. One of the primary functions of the Regional Bureau Nairobi is the "preparation and dissemination of relevant information on criminal activities" (INTERPOL, 2009(l)). An international crime of

particular importance in the region is piracy. The International Maritime Bureau reported that in 2008 there were 111 attacks of piracy in the Region (Somalia/Gulf of Aden) as opposed to 148 attacks by 30 June 2009; 30 vessels were successfully hijacked by June 2009 compared with 42 vessels hijacked in 2008. Some 495 crew members had already been taken hostage by June 2009 as compared to 242 in 2008. (ICC International Maritime Bureau, 2009(a): 22) (ICC International Maritime Bureau, 2009(b): 20). This is despite the presence of war ships and the actions by the international community, referred to in Chapters 4 and 6, such as the navy patrols with the UK, US, Russia, China and India amongst 12 nations contributing ships- the US with the Combined Task Force (CTF-151) deployed since January 2009 (Hanson, 2009).

From 29 to 30 June 2009, Djibouti, Eritrea, Kenya, Somalia, Seychelles, Sudan and Tanzania held a conference in a further bid to combat the crime of piracy in the seaways along the Horn of Africa. Thirty-five participants drawn from the navy, police, marine police, INTERPOL and selected legal representatives from the mentioned countries participated. The workshop was jointly organised by EAPCCO; the Hans Seidel Foundation and the ISS (Allvoices, 2009).

The police cooperation organisation for Western Africa is described hereunder.

5.3.   West African Police Cooperation Committee

The INTERPOL Regional Bureau in Abidjan, Côte d'Ivoire serves 16 West African countries. Key functions of the Regional Bureau are to assess and analyse police information of relevance to the region and to provide crime intelligence, as well as to study and provide information on international crime trends in the West African Region. WAPCCO has sixteen Member States from the West African Region: Republic of Benin; Burkina Faso; Republic of Cape Verde; Republic of Côte d'Ivoire; Republic of the Gambia; Republic of Ghana; Republic of Guinea; Republic of Guinea Bissau; Republic of Liberia; Republic of

Mali; Islamic Republic of Mauritania; Republic of Nigeria; Republic of Senegal; Republic of Sierra Leone; Republic of Togo. WAPCCO was established in 1997 and held annual meetings ever since. Within the Regional Bureau: Abidjan there are five groups, focusing on respectively public security and terrorism; crimes against persons and property; traffic in human beings; economic crime; and drugs (INTERPOL, 2009(m)).

The West African Police Cooperation Organisation previously included a number of Central African Countries, but a separate organisation has recently been established to serve Central Africa in this regard.

5.4. Central African Police Cooperation Committee

CAPCCO is served by the INTERPOL Regional Bureau, in Yaoundé in Cameroon, which was officially opened in 2008. CAPCCO is constituted by Cameroon; Congo; Gabon; Equatorial Guinea; Central African Republic; Sao Tome and Principe; and Chad. CAPCCO focuses on maritime piracy; human trafficking; war crimes; trafficking in vehicles and drug trafficking. The activities of the INTERPOL Yaoundé Regional Bureau include the compilation of periodic reports on crime tendencies in the Region and crime intelligence analysis (INTERPOL, 2009(n)).

The African model for police cooperation is often referred to as the ideal model in view of the fact that the respective regional police cooperation organisations cover a huge number of countries and the fact that INTERPOL is providing secretariat services to almost all of the organisations, providing not only cohesion on the African continent, but internationally.

6. CONCLUSION

Comparing the models for national and international intelligence cooperation respectively, it is clear that the concept of intelligence-led policing is important in respect of both those levels of intelligence cooperation. It is also clear that mistrust and self-interest - in the case of national agencies linked to so-called institutional culture and unhealthy competition between agencies and on regional level, sovereignty, are inhibiting factors. In both instances agencies or states need to 'give up' such interests to either intelligence coordinating mechanisms or regional organisations for the greater good. Sovereignty nevertheless causes the establishment of independent regional intelligence organisations to be highly unlikely. Both in the EU (Europol) and on the African continent (the respective regional police cooperation organisations), crime intelligence cooperation has made huge strides through the involvement of INTERPOL either as a cooperative partner by agreement or providing secretariat services. The African regional police cooperation organisations are unique in the sense that in almost all instances INTERPOL provides such secretariat services. A lack of trust within a regional community can be partly overcome by means of clustering smaller parts of the community, such as countries with common interests together for more intense intelligence cooperation. Such clusters can then take the lead in enhancing cooperation in the community.

Within regional communities cooperation on a strategic level is also undermined by disparate capacities, creating suspicions of compromising sources and methods of intelligence, which requires screening and selective negotiated access to sensitive intelligence. Also on a strategic level, intelligence products such as those relating to organised crime and terrorist threat analysis, are hampered by the lack of input by some countries. In view of the principle of intelligence–led policing, a jointly developed threat analysis is of paramount importance in order to lead joint operations effectively and to focus resources.

As in the case with national intelligence cooperation, issues such as secure communications and security of information are of the utmost importance, as is the development of common standards. A lack of harmonisation or plain lack of legislation on intelligence powers and special investigative techniques such as surveillance and undercover operations remains a factor inhibiting the combating of international crime.

Within a regional community, joint operations to combat transnational crime are of huge importance, and tend to be highly successful in sharing operational intelligence. In this case it is also important for effective intelligence cooperation that agreements are concluded to allow a degree of flexibility for the law enforcement officers of the respective states to operate in each other's countries. The establishment of joint investigation teams, as provided for in the EUROPOL model, is of particular importance for regional intelligence cooperation within the context of the investigation of international crime.

In order to effectively combat international crime through intelligence cooperation, such cooperation needs to be enhanced by efforts to integrate intelligence cooperation with the exchange or obtaining of exhibits and evidence through mutual legal assistance, the extradition of suspects and guidance of prosecutors, as is the case with Eurojust within the EU. Specific arrangements for speedy mutual legal assistance in criminal matters and extradition are required in regional contexts, as is the case in SADC and the EU.

Regional intelligence cooperation organisations, both in respect of crime intelligence and positive intelligence, benefits largely through personnel from member states of the respective countries stationed at the respective organisations providing a spectrum of expertise and access to national agencies and their databases, through established protocols.

Regional intelligence cooperation organisations have established networks with international institutions such as INTERPOL, and the UN, providing the benefit of both regional and international cooperation. This to some extent provides a basis for military intelligence, crime intelligence and civilian intelligence cooperation. There seems, however, to be a lack on the regional level of integrating the three forms of intelligence activities. It appears as if on regional level crime intelligence and civilian intelligence cooperation respectively are well-developed, but without a structure ensuring cooperation on that level between civilian and crime intelligence. Within the EU structures such as the CitCen may play a positive role in this regard. The African model of regional police cooperation with INTERPOL providing secretariat services to all of them, and CISSA enhancing intelligence cooperation between the civilian intelligence services of most countries on the Continent, can serve as a model for other regions.

In the next chapter models of intelligence cooperation on the international level will be analysed, in particular crime intelligence cooperation through INTERPOL and the ways in which the UN as international organisation cooperates to satisfy its intelligence needs as watchdog over world peace and in relation to the combating of war crimes, genocide and crimes against humanity.

CHAPTER 8

MODELS FOR INTELLIGENCE COOPERATION ON INTERNATIONAL LEVEL

1. INTRODUCTION

In Chapter 3, the legal basis on which INTERPOL had been established, its databases, and the most important links through agreements with international organisations in respect of law enforcement, have been described. The links and relationship to police cooperation organisations on regional level were also described in Chapter 7. It is stated that operational independence is key to international organisations dealing with law enforcement. Operational independence (OI) includes the ability of such an organisation to, without restrictions by states, fulfil its mandate through developing and implementing policies and procedures: (Gerspacher, 2002: 24)

> (I)ndependence gives latitude to the IO to develop an information sharing system that truly addresses the obstacles to cooperation providing real time benefits for national competent authorities. In essence, sub-state actors such as police, custom and other law enforcement authorities should be in direct contact with the IO and have direct exposure to its systems and services, eventually bypassing the political level.

In this chapter the databases and operational intelligence support provided by INTERPOL to its members are described and analysed in more detail in order to establish the effectiveness of INTERPOL in respect of operational independence in dealing with crime intelligence in respect of international crimes. INTERPOL is not an intelligence agency in the sense that it has an independent operational

capacity for intelligence gathering within the organisation. Each INTERPOL Member State has a National Central Bureau (NCB) acting as the link between the law enforcement agencies of the relevant country and the INTERPOL General Secretariat in Lyon. However, through agreements with other organisations, such as the UN, and regional security institutions such as NATO, Europol, and the AU, which do obtain intelligence from sources other than Member States, INTERPOL can enrich its databases and add value to operational support to its members and other cooperative partners beyond the collective abilities of the INTERPOL Member States.

In respect of the UN, it has been mentioned in Chapter 4 that it has accepted the need for information and that the term 'intelligence' is no longer avoided in UN context. The ICC had been established under the UN banner with jurisdiction to investigate war crimes, genocide and crimes against humanity. As such, the investigative arm of that court is as much in need of crime intelligence as any other law enforcement agency. Intelligence and intelligence cooperation in respect of war crimes, genocide and crimes against humanity, namely crimes such as murder, slavery, extermination, torture and rape committed within the context set out in the *Rome Statute of the International Criminal Court,* has not yet been addressed in this study and will be discussed in this chapter. Mention had been made in Chapter 3 of various sanctions committees and other institutions of the UN – institutions which cannot fulfil their functions without information/intelligence beyond what can be obtained from Member States.

For the UN to fulfil its functions, the first source of information is of course from Member States, but national interests and jurisdictional barriers in many instances require the UN to collect information required to make crucial decisions regarding world peace, enforcing peace, or invoking the jurisdiction of the ICC. In addition, peacekeeping and peace enforcement forces under the banner of the UN need typical operational intelligence which can be classified as military intelligence, for their own safety and to conduct operations. In order to ensure

lasting peace, peace operations are focused on capacity building also of the law enforcement institutions in countries in a transitional process to peace, involving police officers as an integral part of peacekeeping and peace enforcement forces.

In this chapter attention is given to intelligence gathering, analysis and cooperation on a global level, in relation to the national and regional levels.

Firstly, the INTERPOL model for crime intelligence cooperation is discussed.

2. CRIME INTELLIGENCE COOPERATION AND THE INTERNATIONAL CRIMINAL POLICE ORGANIZATION MODEL

Intelligence exchange and information in respect of law enforcement is far more advanced than the case with positive intelligence, as is evident from the mere existence of INTERPOL - a mechanism for crime intelligence cooperation of which 188 countries globally are members. One of the reasons is that the combating of international crime threats is in the national interest of the international community at large. Exceptions are failed states or where states are involved in providing safe havens for criminals as a result of corruption or for political or other reasons. INTERPOL has the benefit of individual Member States contributing directly to its databases and regional crime threat analysis received from Regional Bureaus, especially in cases such as in Africa where INTERPOL provides secretariat services through its Regional Bureaus. INTERPOL also collects open source intelligence to analyse crimes as reported through the NCBs in a global as opposed to a national context; to ascertain whether available information from confidential sources are representative of the real situation; and to detect unreported elements and detect new investigative leads (Lejeune, 1999: 4). In addition, INTERPOL exchanges information with its other international partners, such as the respective UN agencies, and institutions such as the ICC.

INTERPOL is equipped in terms of its communications systems, databases, and structures to enhance and diffuse crime intelligence to its members and cooperative partners. These elements are discussed hereunder.

2.1. International Criminal Police Organization's communications-, command- and coordination systems

The respective INTERPOL databases can be accessed by all Member States through the I-24/7 communications systems linking all 188 NCBs with the INTERPOL General Secretariat in Lyon, France. The database is described as a secure global communications system communicating in real time. Some countries link the I-24/7 communications systems with all their law enforcement agencies (INTERPOL, 2008(b)). The NCBs in all 188 Member Countries of INTERPOL as well as the Regional Bureaus of INTERPOL are also linked through the INTERPOL Command and Coordination Centre (CCC), which provides a 24-hours service in all four of INTERPOL's official languages. In addition to determining the priority level of each message received and attending to it in accordance with priority, the CCC is responsible for coordinating the exchange of intelligence and information for important operations involving several countries. The CCC administers the issuing of the notices referred to hereunder on a priority basis and provides fugitive investigative support. The CCC operates on a shift basis- three shifts of teams constituted from seconded officials from Member States to INTERPOL, acting as team leaders (INTERPOL, 2008(b)).

2.2. International Criminal Police Organization's databases

The most important databases of INTERPOL to fulfil the need of the police to combat international crime are: The MIND/FIND, which has been mentioned briefly in Chapter 2, and will be discussed hereunder in more detail; data on suspected terrorists; nominal data on criminals (names and photos); fingerprints;

DNA profiles; lost or stolen travel documents; child sexual abuse images; stolen works of art; stolen motor vehicles; the INTERPOL Weapons electronic Tracing System (IWeTS) and the INTERPOL Money Laundering Automated Tracing System (UN, 2009(a)) (INTERPOL, 2008(c)) .

2.3. International Criminal Police Organization's notices system

Requests for assistance from Member States of INTERPOL are used to generate a number of notices in the official languages of INTERPOL. Similar notices are also used by international tribunals and the ICC to bring to justice persons wanted for genocide, war crimes and crimes against humanity. In addition NCBs may use INTERPOL's I-24/7 communications system to send a diffusion, which is a message concerning a wanted person immediately and directly to other NCBs without the involvement of the General Secretariat. Minimum criteria in respect of information submitted to INTERPOL must be met before INTERPOL will communicate a notice to the NCBs. INTERPOL describes the notices as follows: (INTERPOL, 2008(e))

— Red Notice: To seek the arrest or provisional arrest of wanted persons with a view to extradition.

— Yellow Notice: To help locate missing persons, often minors, or to help identify persons who are unable to identify themselves.

— Blue Notice: To collect additional information on a person's identity or activities in relation to a crime.

— Black Notice: To seek information on unidentified bodies.

— Green Notice: To provide warnings and criminal intelligence about persons who have committed criminal offences and are likely to repeat those crimes in other countries.

— Orange Notice: To warn police, public entities and other international organisations of disguised weapons, parcel bombs and other dangerous materials.

— INTERPOL-UN Special Notice: Issued for groups or individuals who are targets of UN sanctions against Al Qaeda and the Taliban.

INTERPOL maintains a public wanted fugitive list, which represents a small proportion of the full list of wanted persons, available to NCBs.

2.4. Crime intelligence analysis structures of International Criminal Police Organization

The Specialised Crime and Analysis Directorate of INTERPOL has a Sub-Directorate: Crime Analysis (CAS) which provides analytical support to units in the General Secretariat and also to Member States, upon request. Currently 11 criminal intelligence analysts, from different nationalities are based at the INTERPOL General Secretariat in Lyon, and three such analysts based in the Sub-Regional Bureaus at Buenos Aires, San Salvador and LoBang. The relative independence of INTERPOL from its Member States is hugely strengthened by INTERPOL's relations with other international and regional organisations, some of which have been listed in Chapter 3. More information on these agreements is provided hereunder.

2.5. International Criminal Police Organization's agreements with other international and regional organisations

The conclusion of cooperation agreements between INTERPOL and international organisations with the combating of various international crimes as their aim, is an ongoing process. INTERPOL has concluded cooperation agreements, in addition to the agreements with ASEANAPOL, Europol, and Frontex, with the Caribbean Community (CARICOM), which was signed on 19 March 2009); the Regional Security System (an intergovernmental organisation consisting of seven Carribean States), which came into force on 16 March 2007); the Caribbean Customs Law Enforcement Council which came into force on 22 October 2004; the Anti-Terrorism Centre of the Commonwealth of Independent States (signed

on 17 December 2008); the International Maritime Organisation which came into force on 20 February 2006); the General Secretariat of the Andean Community which came into force on 21 January 2003; the AU, which came into force on 28 September 2001; and the Organisation of American States (OAS) which came into force on 2 May 2000 (INTERPOL, 2008(a). The agreements indicated above as being signed, have not come into force yet. Standard to most of these agreements are provisions providing for the exchange of information; reference to the rules and regulations governing the confidentiality of the exchange of information; the communication of information being exchanged; and verification of and ensuring the validity and updating of exchanged information. INTERPOL's agreements with regional organisations provide an almost global network for intelligence cooperation in terms of regional organisations.

The unique arrangements between INTERPOL and its Regional Bureaus in Africa have been referred to in Chapter 7. Some INTERPOL Member States in Africa are still not included in the areas of responsibility of the Regional Bureaus in Africa. Understandably cooperation between INTERPOL and its regional partners are not on the same level as in the regions where INTERPOL provides secretariat services, as is the case in Africa. Although INTERPOL has not concluded agreements with regional civilian intelligence organisations such as CISSA in Africa and CitCen in the European Union, it has concluded agreements with regional organisations such as the EU, and AU, which have within their structures organisations with the aim of cooperation on civilian intelligence. The reason for this is probably to be found in Article 3 of the INTERPOL Constitution, which strictly forbids INTERPOL to undertake any intervention or activity of a political, military, religious or racial character.

2.6. International Criminal Police Organization's role in respect of intelligence cooperation on war crimes, genocide and crimes against humanity

Cooperation between INTERPOL and the UN in respect of "carrying out investigations and other police-related matters in the context of peacekeeping and similar operations" dates back to before the conclusion of an agreement in that regard in 1997. A number of other agreements have also been concluded between INTERPOL and UN established structures to facilitate cooperation in respect of *inter alia* international humanitarian law. These agreements are discussed hereunder.

2.6.1. Agreement between International Criminal Police Organization and the United Nations

This agreement serves to further strengthen cooperation which stretched over years between INTERPOL and the UN in the field of crime prevention and criminal justice. The scope of cooperation in terms of the agreement relates to investigation of contraventions of international humanitarian law (war crimes, genocide and crimes against humanity), in particular in the former Yugoslavia and Rwanda; and cooperation in response to international threats in respect of national and transnational crime. Particular reference is made to the combating of activities of organised criminal groups in the form of money-laundering, illicit trafficking in human beings and drug trafficking. The agreement provides for consultation and cooperation, exchange of information and documents, technical cooperation, exchange of personnel and joint representation in the respective organisations. The agreement gives specific recognition to the UN Commission for Crime Prevention and Criminal Justice's Crime Prevention and Criminal Justice Division as the only office within the UN Secretariat with responsibilities in respect of crime prevention and criminal justice. A number of agreements were concluded to promote cooperation between INTERPOL and international

tribunals established by the UN Security Council. These agreements are discussed hereunder.

2.6.2. Agreements between International Criminal Police Organization and specific tribunals

The first of these agreements was concluded in 2002 with the UN Mission in Kosovo (UNMIK) in support of the International Criminal Tribunal for the former Yugoslavia (ICTY). In this agreement INTERPOL and UNMIK agreed on full and prompt exchange of 'police information'. UNMIK had to designate in terms of the agreement within its offices a contact point which would perform the same functions normally assigned to an NCB, and that contact point would have the same rights as an NCB, including the right to circulate diffusions to the INTERPOL General Secretariat as well as to NCBs of INTERPOL Member States. UNMIK was also allowed access to INTERPOL databases and to use INTERPOL communications systems. INTERPOL agreed to circulate notices, including Red Notices through its system for arrest warrants issued by the ICTY (INTERPOL, 2009(b)).

A similar agreement, but limited to the exchange of "police information and circulation of notices, including Red Notices and arrest warrants" by INTERPOL on its system, was concluded in 2003, with the Special Court for Sierra Leone. The Special Court's warrants received preference over those issued by national courts in Sierra Leone (INTERPOL, 2009(c)). An Interim Agreement between INTERPOL and the Special Tribunal for Lebanon was concluded in August 2009, which provides only for cooperation between INTERPOL and the Special Tribunal for Lebanon on a 'case-by-case' basis (INTERPOL, 2009(d)).

Since the adoption of the *Rome Statute of the International Criminal Court* in 1999, the ICC, despite having only complementary jurisdiction to national jurisdictions, has become active in the prosecution of war crimes, genocide and

crimes against humanity. A cooperation agreement between the Office of the Prosecutor, who in terms of the *Rome Statute of the International Criminal Court* is also in charge of investigations for the ICC, and INTERPOL came into force on 20 February 2005. The agreement provides a framework for cooperation between the ICC and INTERPOL "in the field of crime prevention and criminal justice, including the exchange of police information and conduct of criminal analysis, the search for fugitives and suspects, the publication and circulation of INTERPOL notices, the transmission of diffusions and access to INTERPOL telecommunications network and databases". Provision is made that information received from INTERPOL Member States may be provided to the Office of the Prosecutor on the basis that it will not be disclosed without the express written consent of the provider of the information. As mentioned in Chapter 2 some of the major powers such as the US, the Russian Federation and China, are not Party to the *Rome Statute of the International Criminal Court.* The Office of the Prosecutor may also request through INTERPOL, the assistance of relevant national teams such as national Disaster Victims Identification Teams or war crimes units. INTERPOL must approve the hardware, software and services used by the Office of the Prosecutor to access INTERPOL databases, and communications lines must be secured by the Office of the Prosecutor. Police information may only be forwarded by the Office of the Prosecutor to approved addressees under the same conditions as supplied by INTERPOL (INTERPOL, 2009(e)). In the next sub-section, the role of INTERPOL in intelligence cooperation in respect of terrorism, organised crime; mercenary crimes; crimes relating to the proliferation of WMD and piracy will be discussed.

2.7. International Criminal Police Organization's role in intelligence cooperation on terrorism, organised crime; mercenary crimes; crimes relating to the proliferation of WMD and piracy

Before INTERPOL's role in intelligence cooperation in respect of terrorism, organised crime; mercenary crimes; crimes relating to the proliferation of WMD

and piracy can be discussed, the issue of the convergence of international crime needs to be elaborated upon.

2.7.1. The convergence of international crimes

At the most recent General Assembly of INTERPOL, 60 ministers from around the world supported a plan of action to promote international police peacekeeping as an essential counterpart to the military in helping re-establish the rule of law and rebuild conflict-ridden societies. The aim is that police peacekeepers must assist to rebuild failed states, and to promote good governance and sustainable peace. Of particular importance is that INTERPOL undertook to make its communications systems and databases available to police peacekeepers, not only for peacekeeping purposes, but in view of the realisation that there is a link between conflict and organised crime as there is a link between failed states and safe havens for terrorists: "Criminal elements are increasingly fuelling wars by providing belligerents with the resources to finance expensive military activities" (INTERPOL, 2009(i)). It is becoming increasingly clear that in the Gulf of Aden and Somalia, there is not only a link between piracy and terrorism, but also a link between organised crime and piracy. INTERPOL officials recently announced that organised crime syndicates are behind the piracy attacks and in particular the huge amounts of ransom money obtained through hijacking of vessels off the Somali coast (Abbugao, 2009).

There are at least eight areas of similarity between terrorism and organised crime: (Makarenko, 2002: 8)

— The use by both organised crime and terrorists of networks and cell-based structures;

— the national- regional and transnational nature of both;

— both require safe havens and take advantage of 'diaspora communities';

— both groups use similar targeting and deployment techniques and have sophisticated intelligence and counter-intelligence capabilities;

— both have "a programme of government and public relations"; and
— both organised crime and terrorism are dependent on external funding.

The characterisation of the interaction between organised crime and terrorism is important to provide law enforcement and intelligence agencies with actionable information, to focus investigations, improve warning time and reveal vulnerabilities (US, 2005(d), 2005: 23). Both military and civilian analysts have been using the technique of "Intelligence Preparation of the Battlefield (IPB)" to accomplish the above goals in their area of interest. The common areas between organised crime and terrorism have been utilised to develop a similar technique in respect of crime intelligence analysis, referred to as "Preparation of the Investigative Environment (PIE)". In terms of PIE some 12 'watch points' or 'indicators' have been identified to serve as a focus for crime intelligence analysis. The nature of these watch-points is such that it should serve as the focus of crime intelligence cooperation. As was pointed out above, there is also an overlap or convergence between piracy and terrorism and even conflict and organised crime. Although it is not deemed necessary to go into the full details of these watch points, an outline thereof needs to be provided as this could be used in especially a draft instrument on intelligence cooperation for which a need has been expressed as mentioned in Chapter 5.

It is also important to establish whether the databases of INTERPOL, for example relate to these 'watch points': (US: 2005(d): 45 – 58)

(a) Watch Point 1. Open activities in the legitimate economy: Terrorists, criminals involved in organised crime, and indeed criminals involved in all international crimes, on an operational level, need to carry out legitimate transactions, including to buy food, clothing, specialised equipment, computers, rent apartments, buy plane tickets, obtain visas and passports and open bank accounts. Crime intelligence therefore needs to focus on travel information, mail and courier services, customs transactions and

documents and companies or legal entities which could possibly serve as front companies.

(b) Watch Point 2. Shared illicit nodes: These are of particular importance in countries with effective law enforcement where activities of criminals need to be covert, as opposed to lawless countries or failed states where criminal activities can be more overt. Illicit nodes include 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) Watch Point 3. Communications. Criminals involved in organised crime and terrorism have a need to communicate, and have realised the value of encrypted communications. Elements within organised crime open their encrypted communications systems to whoever can pay, including terrorist groups. In the Tri-Border region of South America clandestine telephone exchanges connected with *Jihadist* networks were found. There may also be overlaps where both organised criminals and terrorists use the same high tech crypto specialists and couriers.

(d) Watch Point 4. Use of information technology (IT): In view of the relative anonymity offered by digital transactions, online transactions are used by organised crime to commit crime, whilst terrorists use it for fundraising. In this instance the same technical experts are also often shared between organised crime and terrorists.

(e) Watch Point 5. Violence. Although no indicators have been developed in this regard, it is not excluded that indicators may be developed, such as the hiring by both organised crime and terrorists of the same persons to perform for example assassinations.

(f) Watch Point 6. Corruption. Especially in failed states or states where law enforcement is less effective, corrupted law enforcement officers, judiciary, border guards, politicians, or internal security agents may be abused by both terrorists and organised crime groups.

(g) Watch Point 7. Financial transactions and money-laundering: The indicators in this regard are shared methods of money-laundering and mutual use of front companies, as well as financial experts.

(h) Watch Point 8: Organisational structures. Persons involved in organised crime such as drug trafficking have been recruited by terrorists, whilst terrorists often act as suppliers of arms and ammunition especially in some conflict areas. Terrorists often supply drugs to finance their operations.

(i) Watch Point 9: Organisational goals. Whilst terrorists usually pursue political or religious goals, and criminals involved in organised crime pursue personal profit, in some countries both groups could share a strong dislike of "those in power, of legislation and regulation and the economic system" and consequently would cooperate to attain success.

(j) Watch Point 10. Culture: The manner in which culture links and strengthens relationships within any organisation, as well as how culture could link criminal networks to each other, is the focus in this watch point. Indicators in this regard could be religion, shared nationalism of suspects and their relationship with particular societies.

(k) Watch Point 11. Popular support: Both terrorist groups and organised criminal groups often appeal to disadvantaged groups in order to gain popular support.

(l) Watch Point 12. Trust: Both organised criminal groups and terrorist groups use initiation rituals and 'tests of allegiance', in order to 'test' the trust that can be placed in their members.

In the following section, the role of INTERPOL in intelligence cooperation in respect of terrorism, organised crime; mercenary crimes; crimes relating to the proliferation of WMD and piracy is discussed.

2.7.2. International Criminal Police Organization's role in intelligence cooperation on terrorism

INTERPOL established the Fusion Task Force (FTF) in 2002, with counter-terrorism specialists from Member States serving on the FTF. Six regional FTF's have been established in regions most "susceptible to terrorist activities", namely South East Asia, Central Asia, South America, Africa, Europe and the Middle East. The objectives of the FTF include the identification of active terrorist groups and their membership; to solicit, collect and share intelligence; and to provide analytical support to Member States. INTERPOL cooperates with the UN (see for instance the notices relating to the lists of suspected Taliban and Al-Qaida terrorists circulated by INTERPOL). INTERPOL also maintains a secure website with information on meetings of the FTF, analytical reports, photo-boards of suspected terrorists, notices and diffusion lists. The FTF has built a network of over 200 contact persons in 100 countries (INTERPOL, 2008(f)). INTERPOL has issued guidelines to Member States regarding the reporting of information to INTERPOL on terrorism, including information on other crimes which may be linked to terrorism such as suspicious financial transactions, weapons trafficking, money-laundering, falsified travel and identity documents, and seizure of nuclear, chemical and biological agents (INTERPOL, 2008(g)). It can be argued that the above watch-points are relevant to all international crimes, as war criminals, especially top politicians often become fugitives, utilising fraudulent passports and also the financial system to move funds to sustain themselves.

2.7.3. International Criminal Police Organization's role in intelligence cooperation on organised crime

INTERPOL assists 188 countries to monitor and analyse information relating to specific activities and criminal organisations; to identify major crime threats with potential global impact; and to evaluate and exploit information received from NCBs, law enforcement agencies, open sources, international organisations and

other institutions. INTERPOL also monitors open source information and reports and provides support in ongoing international investigations on a case-by case basis. This cooperation enables INTERPOL to identify links between transnational crime investigations which would not otherwise have been possible and to follow such links up with special projects, such as targeting Eurasian and Asian criminal organisations. INTERPOL acts as a clearinghouse for the collection, collation, analysis and dissemination of information on organised crime and criminal organisations. It also monitors the organised crime situation on a global basis and coordinates international investigations.

Part of INTERPOL's mission is to "stimulate the exchange of information between all national, international enforcement bodies concerned with the countering of organized crime groups and related corruption" (INTERPOL, 2008(h)). Money-laundering is interlinked with organised crime and in this regard the INTERPOL Money-Laundering Unit sifts through thousands of messages received from Member States to notify investigators of previously unknown links. The Anti-Money-Laundering Unit is dedicated to improve the flow of money-laundering information amongst financial investigators by forging alliances with financial intelligence units and financial crime units around the world. As with the FTF, liaison officers have been identified around the world to act as national contact officers regarding money-laundering investigations (INTERPOL, 2008(i)).

2.7.4. International Criminal Police Organization's role in intelligence cooperation on mercenary crimes

INTERPOL does not have a specific focus on intelligence or information relating to mercenary activities other than the overlap that might exist between terrorist activities and mercenary actions. The reason for this are the deficiencies in the international framework relating to mercenaries, set out in Chapter 2; that few countries have strengthened their national legal frameworks to combat mercenary crimes; and that private military companies find it easy to evade those

domestic acts that do exist. In view of the fact that so many states actively rely on private military companies enough political support to effect what is logically needed, namely an international ban on private military companies is improbable (Gaston, 2008: 240, 241). There are steps to improve the regulation of private military companies, but without strengthening the international legal framework regarding mercenaries, international intelligence cooperation in respect of mercenary crimes will probably remain limited to the African continent where the need for such cooperation has been a catalyst for the establishment of CISSA.

2.7.5. International Criminal Police Organization's role in intelligence cooperation on the proliferation of weapons of mass destruction

INTERPOL, in addition to activities in respect of both terrorism and organised crime in so far as it relates to WMD, has concluded an agreement with the primary UN watchdog relating to nuclear proliferation and regulation, the IAEA. More information on the IAEA will be provided in this chapter. The agreement provides for cooperation between INTERPOL and the IAEA to exchange and use information, including information relating to illicit trafficking and relevant to the nuclear security regulatory infrastructure for the prevention of nuclear terrorism and illicit trafficking in nuclear and other radio-active materials; and also to most effectively utilise their resources in the collection, analysis and diffusion of the information referred to above (INTERPOL, 2009(f)).

2.7.6. International Criminal Police Organization's role in intelligence cooperation on piracy

INTERPOL hosted a meeting of the Maritime Piracy Working Group, in September 2009, with the purpose of increasing information sharing among Member States and also with the General Secretariat of INTERPOL on maritime piracy issues in order to further support Member States in their investigations, and to enhance cooperation between military and police forces. INTERPOL

actively liaises with some 12 organisations including the United Nations Office on Drugs and Crime (UNODC), Europol, the International Maritime Organisation and the International Maritime Bureau on the issue of piracy, which is regarded as a form of organised crime (INTERPOL, 2009(h)). INTERPOL has also concluded an agreement with the International Maritime Bureau on the exchange of information on piracy and maritime safety (INTERPOL, 2009(g)).

INTERPOL is fast progressing in improving crime intelligence cooperation in respect of all international crimes, with the exception of mercenary crimes. As pointed out in the previous chapter its Regional Bureaus in Africa are of particular importance. There is still scope for expanding regional offices of INTERPOL on the same basis as in Africa. INTERPOL is well connected with relevant regional and international organisations dealing with crime. It is gaining more and more independence as an organisation, contributing to its effectiveness. Although it cannot be regarded as an independent intelligence agency, the General Secretariat does at least gather open source intelligence independently, and it can source information through its international partners which is far more than the collective input from the NCBs of its Member States. It not only serves as a communications and dissemination tool for law enforcement on a global basis, but independently analyses information received, which leads to joint operations between Member States.

There is clearly a need to further build on INTERPOL's independence. Article 3 of INTERPOL had not really been a stumbling block in combating crimes with a political motive such as terrorism, as a result of the fact that terrorist crimes are captured in various international instruments which alleviates the lack of an universally accepted definition of terrorism. INTERPOL's databases and intelligence cooperation to a large degree reflect the 'watch points' set out above in order to generate and distribute actionable intelligence to combat international crime. It is clear that there is a high degree of trust in INTERPOL as organisation, although it had been pointed out in Chapter 1 that Member States do not always

utilise INTERPOL databases sufficiently. Although it was indicated that INTERPOL wishes to enhance cooperation between police and military forces in respect of the combating of piracy, there is in view of Article 3 of the INTERPOL Constitution no formal relation between INTERPOL and civilian or military intelligence organisations and it is highly improbable that this will develop. Cooperation between positive intelligence and crime intelligence therefore will be the strongest on national level, and takes place to some extent in regional organisations such as the EU, and AU on a limited scale. The links between INTERPOL and the UN as an international organisation which needs and uses intelligence has been mentioned.

It is, however, necessary to establish how the UN deals with intelligence. The UN requires positive intelligence for peacekeeping operations, which is received to some extent from the Member States, involved in these operations, but is also generated by the UN peacekeeping missions. Crime intelligence required for decision-making processes of the UN to invoke the jurisdiction of the ICC, or for the prosecution of war crimes, genocide and crimes against humanity is mostly gathered by *ad hoc* institutions such as international commissions of inquiry or special missions set up to investigate transgressions of the *Rome Statute of the International Criminal Court*. Crime intelligence cooperation takes place through the UN's international partners, such as INTERPOL, and independent agencies such as the IAEA.

3. UNITED NATIONS INTELLIGENCE ACTIVITIES AND COOPERATION

In Chapter 3 it was pointed out that the UN needs intelligence for peacekeeping and peace enforcement, for the safety of UN forces, as well as effectively performing its peacekeeping operations. The UN Situation Centre was referred to, as an instrument in this regard as well as the fact that various methods are used to gather intelligence for the UN. In this chapter it was also pointed out that

the role of peacekeeping forces are expanded to empower police components as permanent features of peacekeeping forces and that they are empowered to also play a role in combating international crimes which impact negatively on peace processes. The UN plays a huge role in respect of the application of international criminal law, especially through sanctions of the UN Security Council, which need to be enforced not only on the diplomatic level, but practically through the national laws adopted by countries to combat the proliferation of WMD; assistance to terrorist members, organisations and associates; and the illicit trade in conventional arms to countries subject to such sanctions. In addition, though the ICC has only complementary jurisdiction to the jurisdiction of national courts in respect of war crimes, genocide and crimes against humanity, it remains the principal court in which such crimes are being prosecuted.

The UN has two areas of intelligence activities in this regard, firstly to lay a basis for a resolution by the UN Security Council to invoke the jurisdiction of the ICC in respect of a particular country; and secondly the investigation of war crimes, genocide and crimes against humanity, which is tantamount to crime intelligence gathering by the investigation authority of the ICC, namely the Chief Prosecutor thereof, in order to be able to prosecute cases. In Chapter 4 it was only mentioned that the structures of the UN in this regard are bureaucratic. The methods and structures employed by the UN to obtain the required intelligence for the above purposes are described hereunder, with particular reference to the complicating factor of sovereignty and self-interest of states. The first area that is elaborated upon is the gathering of intelligence in respect of the enforcement of international obligations and UN sanctions in respect of the proliferation of WMD.

3.1. Intelligence support of the United Nations to enforce compliance with international obligations and United Nations sanctions relating to weapons of mass destruction

The first enforcement issue that is described is the combating of the proliferation of WMD. Mention has been made in Chapter 2 of Resolution 1540 of the UN Security Council in respect of the obligations on Member States of the UN to combat the proliferation of WMD as well as crimes that need to be adopted in national statutes in respect thereof. The 1540 Committee was established by the UN Security Council to monitor the implementation of the Resolution by Member States. The focus of the Committee is, however, more on the promotion of the implementation of the Resolution through encouraging Member States to become party to the relevant international instruments and to adopt and implement national legislation to give effect to those instruments, than on crime intelligence in respect of transgressions of non-proliferation legislation (UN, 2008(f): 6). In respect of enforcement on a more practical level, also of sanctions of the UN Security Council, the UN relies on two organisations in respect of the combating of the proliferation of WMD, namely the Organisation for the Prohibition of Chemical Weapons (OPCW) in respect of the Chemical Weapons Convention (CWC) and the IAEA in respect of the combating of the proliferation of nuclear weapons in terms of the Non-Proliferation Treaty (NPT). The UN Security Council sanctions on providing any assistance relating to nuclear arms and material, such as those against the Democratic People's Republic of Korea, in effect determines the scope of application of national laws to combat the proliferation of WMD (UN, 2009(f): 3). The OPCW staff complement consists of less than 500, which includes 150 inspectors who are trained and equipped to inspect military and industrial facilities in the 188 Member States who are party to the CWC (Sweden, 2006: 129).

The UN has concluded a special agreement with the IAEA to report annually to the UN General Assembly and when "appropriate" to the UN Security Council

regarding non-compliance by states as well as "on matters relating to international peace and security" (IAEA, 1959). The IAEA Secretariat consists of a staff of 2 200 multi-disciplinary professional and support staff from more than 90 countries. It is an independent organisation related to the UN System ("in the UN family") (IAEA, 2009(a)). The agreement between the UN and the IAEA provides for the 'fullest and promptest' exchange of appropriate information and documents between the two institutions. Both institutions also have the reciprocate obligation to furnish 'studies or information' upon request to each other (IAEA, 1959: Article VII). In respect of the proliferation of WMD, in particular access to nuclear material by terrorist groups, the IAEA and the UN's role is more of a preventive nature. Libya's actions in its quest for constructing nuclear weapons were exposed through intelligence actions and eventually solved through diplomacy and political pressure (Sweden, 2006: 66). The IAEA is in an ongoing process of installing digital surveillance systems and unattended monitoring systems, and to expand its capabilities to transmit data directly from the field for monitoring and evaluating in its headquarters or regional offices (IAEA, 2009(b)). The IAEA is primarily dependent on intelligence from its members and other members of the UN. Western intelligence agencies, for example, during 2005, were providing the IAEA with documentation of suspected Iranian nuclear weapons-related activities, with the *caveat* that these documents may not be shared with Iran.

One of the constraints in this regard is that the IAEA must be careful not to compromise sensitive military information during its investigations- in the Iranian investigation Iran claimed that its experiments with high explosives and work on its ballistic missile programme are "solely related to its conventional military capabilities". Iran therefore claimed that the investigation could jeopardise military secrets. Intelligence received from members of the IAEA or from national intelligence agencies, should such intelligence indicate non-compliance with non-proliferation measures, may prompt site visits to the country in question. Such site visits of IAEA inspectors include taking swabs for forensics testing for the

presence of nuclear material. The cooperation of the country visited is important as is evident from how IAEA inspectors were frustrated in site visits to Pakistan's Kalaya Electric installation (Frantz & Collins, 2007: 285). The following observation has been made about the intelligence cooperation between national intelligence agencies and international inspectors, with reference to Iraq: (Sweden, 2006: 172, 173)

> National intelligence agencies may acquire information through such means as electronic and aerial surveillance, export controls and intelligence gathering. Their need to protect sources and techniques sets limits on the information they can provide international inspectors. Nevertheless it is clear that national intelligence services can greatly assist international inspection by providing important information…However, it is crucial that this remain a one-way street. Inspectors and inspections must not become the extended arms of intelligence services – otherwise as experience has shown, they will loose their credibility and international respect.

It has been recommended that the UN Security Council should set up a small technical unit, parallel to the IAEA, to provide it with professional technical information and advice on WMD and be available to organise *ad hoc* inspections in states as well as monitoring in the field. The UN Security Council has the power to authorise intrusive fact finding missions in Member States and also to authorise even military action to be taken in appropriate cases, and the effectiveness of such a unit would probably be higher than that of the IAEA (Sweden, 2006: 174, 176, 203). The fact that the IAEA inspection teams cannot force Member States to provide access and to cooperate, results into dependence on the goodwill of the countries visited. For that reason, intelligence collected or obtained from other sources remains of cardinal importance to the IAEA. The IAEA is dependent on extra-budgetary assistance from Member

States such as the US, and in view further of what is referred to as the IAEA's 'ageing staff', doubt has been expressed about the IAEA's abilities to perform its fundamental mission as the world's nuclear watchdog to detect the illicit diversion of nuclear material and discovering clandestine activities associated with weapons programmes (US, 2008(d): 45).

It has been argued that the *ad hoc* use of intelligence processes by a small number of IAEA Member States has been inadequate to curb the black market activity in nuclear materials. Intelligence functions, namely analysing open-source intelligence and assessing imagery are performed by two units of the Safeguards Information Management Directorate of the IAEA, whilst there are allegedly no technical personnel in the unit responsible for the investigation of illicit trafficking in nuclear material. An ex-employee of the IAEA's intelligence branch, Mowatt-Larssen proposed that the IAEA should establish a more productive intelligence unit with about a dozen investigators with "a professional intelligence background". He, however, made it clear that such collection should be based on open-sources and not through clandestine activities. Concern has at the same time been expressed of the risk of exposure of state secrets and that the IAEA does not have a security culture in respect of the protection of information (Grossman, 2009: 2, 5, 6).

3.2. United Nations intelligence activities in respect of the combating of terrorism

In Chapter 3, as well as in this chapter, reference has been made to the listing in terms of Resolution 1267 of the UN Security Council of suspected Taliban and Al-Qaida terrorists and associates. The listing process in the UN Security Council, through the Resolution 1267 Committee, places the UN Security Council in the operational arena, in that the persons or entities thus listed are subject to travel bans, sanctions on access to weapons, as well as subject to asset freezing and must be denied any financial assistance or banking facilities. The listing

takes place following a statement of case by the applicant Member State to the UN Security Council. The problem has arisen that the protection of sources is of particular importance in counter-terrorism work. The proposed listing of a person or entity is often based on confidential information or information subject to national security classification. States are reluctant to allow foreign nationals access to their secret information and even more so to allow the examination of the veracity of those sources. There is a danger that the authority of the UN Security Council may be eroded if Member States act in contravention of their national laws (if there is a lack of information to substantiate not only the listing, but to support administrative and legal action to enforce the UN Security Council sanctions applicable to listed persons or entities). The possibility of appointing a review committee outside the UN Security Council to review such a listing has been mentioned (UN, 2009(b)).

3.3. Intelligence relating to war crimes, genocide and crimes against humanity

In terms of the *Rome Statute of the International Criminal Court,* the ICC shall *inter alia* have jurisdiction if a situation in which one or more war crimes, crimes relating to genocide or crimes against humanity, appear to have been committed, is referred to the Prosecutor of the ICC by the UN Security Council acting under Chapter VII of the Charter of the UN (UN, 1999 – 2003 : Article 13(b)). The UN Security Council, in order to adopt a resolution for such referral needs information, comparable to crime intelligence, collected by an independent institution. The mechanism used for such investigation is by means of an international commission of inquiry set up by the Secretary General under the authority of a UN Security Council Resolution under Chapter VII of the *Charter* of the UN. The International Commission of Inquiry on Darfur, set up in terms of Resolution 1564 (2004) to inquire into reports of violations by all parties in Darfur of the IHL and Human Rights Law and to identify the perpetrators is an example in this regard. This Commission of Inquiry clearly illustrates the challenges faced

in obtaining the relevant information as well as the sources thereof. One of the major challenges is that the government security forces, including the defence, law enforcement and intelligence agencies of the Sudan have been the subjects of the Commission of Inquiry.

There were, however, a number of other challenges. Reports of the UN, Human Rights Groups and Non-Governmental Organisations (NGO's) were primary sources of information for the International Commission of Inquiry. The Commission, however, had to independently verify the reports. The sheer number of incidents reported required a proper prioritisation by the Commission based on incidents most representative of acts, trends and patterns of the alleged transgressions of the IHL and human rights law, with greater possibilities of fact-finding. Access to sites of incidents; protection of witnesses; and the potential for gathering the necessary evidence, were major considerations to select particular sites (UN, 2005(b): 61).

Some of these reports contained satellite imagery which documented systematic and widespread destruction of entire villages. This evidence was confirmed by site-visits where the Commission witnessed the destruction. This was further corroborated by eyewitnesses (UN, 2005(b): 81, 82). Eyewitnesses also described their attackers, according to the uniforms, weapons, physical appearance and language as the Janjaweed, government sponsored agents; or soldiers who intimidated, raped, abducted or killed civilians in Darfur (UN, 2005(b): 88, 94). During visits to the Sudan, the Commission interviewed victims, eye-witnesses, government officials, soldiers, Internally Displaced Persons (IDPs), NGOs and UN officials. This includes interviews with witnesses who fled to Chad (UN, 2005(b): 13). The Commission became aware of interference with witnesses by government agents; the placing of infiltrators between the IDPs; the offering of money not to agree to be interviewed by the Commission; and harassment and threat of injury or death (UN, 2005(b): 16).

The Commission decided to keep confidential the names of both identified perpetrators and witnesses, especially for protection of the witnesses (UN, 2005(b): 133, 134). Most witness statements were taken in confidentiality and were unsigned. Police reports, judicial decisions and hospital records as well as records of burial sites were kept by the Commission (UN, 2005(b): 134). The Commission has not been vested with investigative or prosecutorial powers, nor could it make any finding on criminal guilt. Its function, however, was to pave the way for future investigations, and possible indictments by a prosecutor and convictions by a court of law (UN, 2005(b): 134, 161). The Commission performed its inquiry in strict confidentiality and avoided interaction with the media (UN, 2005(b): 11).

The Commission's efforts to gain access to minutes and documentation of the Government of Sudan's security institutions on the use of force against rebels and the civilian population were unsuccessful and the Commission was provided only with selected final decisions on general issues, despite reliable information of the existence of minutes in that regard. A full set of records on the use of aircraft or helicopters used by the Sudanese security forces, could also not be obtained from the Government of Sudan (UN, 2005(b): 16). The Commission had to perform its inquiry during ongoing conflict in Darfur.

More recently, a somewhat different approach as with the above UN Commission of Inquiry, in respect of Darfur, was followed into the alleged war crimes committed in Gaza, during Operation Cast Lead, launched between 27 December 2008 and 18 January 2009, by the Israeli military in response to missile attacks by Hamas. In the Gaza case, the UN Security Council appointed and mandated a UN Fact Finding Mission to investigate the relevant events. The fact that it is called a UN Mission, linked with the fact that the secretariat for the mission was established by the UN High Commissioner for Refugees, underlined the diplomatic status and immunity of a UN Mission (UN, 2009(c): 5). The Mission utilised in some respects the same sources of information as the

Commission of Inquiry in Darfur, in order to compile its report to the UN Security Council, such as field or site-visits where incidents occurred; the review of reports from different sources, including NGOs; human rights organisations, academics and analysts and other UN organisations; and obtaining witness statements.

The Mission, however, also called for written submissions from the public and held public hearings in Gaza, and in order to reduce the possibility of intimidation or influencing of witnesses, public hearings were in addition held in Geneva. As in the case of Darfur, the names of victims and perpetrators were generally not mentioned in the report. The Mission also obtained forensic analysis of weapons and ammunition remnants collected at incident sites; held meetings with a wide range of interested parties. Interviews were conducted, (some by telephone) both with witnesses and persons in possession of relevant information, and some in private. Medical reports of injuries were obtained and examined and media reports studied (UN, 2009(c): 7, 8, 47). Of particular importance are the video and photographic images that were studied, including satellite imagery obtained from UNOSAT and analysed by experts (UN, 2009(c): 48).

UNOSAT is an UN agency with the mission to provide satellite imagery and geographic information to the UN humanitarian community in the most straightforward, efficient and cost-effective manner possible. The result of increasing scientific development and "privatisation of space" is that military intelligence agencies lost their monopoly over imagery with a high level of detail. This has a profound impact on political decision-making in view thereof that in respect of such high resolution imagery, UN agencies, NGOs and the media have similar access as military and foreign affairs ministries, leading to more transparency in international diplomacy. UNOSAT has negotiated discounted prices for satellite imagery to the UN community. The service delivery is extraordinary, for example: "(t)he UNOSAT partners' SPOT image and Space Imaging Eurasia, can acquire a satellite image of the Middle East and deliver this to UNOSAT within 24 hours" (UN, 1949 - 2009: 5). Of further importance for this

study is that UNOSAT cooperates with the UN Interregional Crime and Justice Research Institute (UNICRI) by providing satellite derived mapping and geographic information regarding the following: (UN, 1949 - 2009(c))

— To advance understanding of crime-related problems;

— to gather and analyse criminal intelligence data;

— to identify geographical crime patterns; and

— to facilitate international law enforcement cooperation and judicial assistance.

3.4. Crime intelligence gathering and analysis for prosecution of war crimes, genocide and crimes against humanity

The investigation of war crimes in particular, differs to a large extent from national investigations into crime, as a result of the following circumstances: (ICTY-UNICRI, 2009:7)

— Breaches of the IHL normally involve immense geographical areas, take place over long time periods and involve military, paramilitary and mercenary actors.

— The crimes involve hundreds or thousands of victims and therefore result in a massive volume of evidentiary material.

— Interference in the cases by influential and high ranking politicians or officials could be experienced, requiring extensive witness protection programmes and even relocation to other counties. To further protect witnesses their identities can only be made known to the defence shortly before the hearing.

— Crimes are committed during periods of "chaos and stress" and sometimes many years before investigations commenced.

— The cooperation of the state in which the investigations are performed may be lacking or the state may be obstructive to the investigations.

The investigation of the abovementioned international crimes by the Chief Prosecutors of respectively the ICTY and the International Criminal Tribunal for Rwanda (ICTR), served as a benchmark for future investigations by the ICC. Information gathering for the ICTY had to take place whilst the conflict was ongoing. The ICTY developed practices to ensure that states which are in possession of intelligence relating to war crimes present the same to the ICTY on a confidential basis and with the undertaking that it will not be revealed without the permission of the state that has provided it, if it is feared that intelligence practices might be revealed or if the state fears that its role towards a particular party to the conflict or in the conflict itself might be revealed (ICTY-UNICRI, 2009: 8).

The importance has been realised to identify at an early stage of investigations sensitive sources, to evaluate such sources and to take measures to protect the sources' personal safety and the confidentiality of information. Military intelligence and operational documents may be central to the investigation of a war crimes case, but would normally not be accessed by courts. It is, however, considered better to have access to such sensitive information even if it could not be used as evidence (ICTY-UNICRI, 2009: 19). The ICTY was aware of many instances where sensitive witnesses who were to testify against high ranking persons were assaulted or even killed. Adequate measures for witness protection must therefore be taken. The ICTY also used informants, namely persons who will provide confidential information sometimes for payment, without being expected to testify. Verification of such information is essential and the source must be protected. Proper records should be kept, not only for the protection of the informer, but also to counter allegations of impropriety or corruption. Special measures were taken to allow states or NGO's or other organisations to provide sensitive and confidential information as a lead only, not to be disclosed other than by consent. The name of the provider or staff members of the provider of such sensitive and confidential information, often may not be disclosed (ICTY-UNICRI, 2009: 20).

Vulnerable witnesses and sensitive sources could provide evidence and information in the form of "witness statements, documentary evidence, experts' reports, intelligence reports, intercepts, etc" Proper record-keeping and arrangements for securing sensitive information must be taken (ICTY-UNICRI, 2009: 27). Best practices have been developed to keep record of and dispose of evidence as diverse as: "archives, diaries, journals and books, military reports, situation reports, dispatches, minutes of government sessions, command and control documents, international reports, photographs and videos, intercepts and open sources". Other sources of evidence include "computer equipment, clothing, ballistic and trace metals and firearms found at crime scenes and other locations" (ICTY-UNICRI, 2009: 27).

Many humanitarian and other organisations, through their involvement during and directly after a conflict in the relevant country, are exposed to information and victims of war crimes. It is important that members of these organisations are encouraged to gather general information of the details and in particular note the future contact details of the victims, but they should leave the taking of comprehensive witness statement to professional investigators (ICTY-UNICRI, 2009: 16). In addition to informers and witnesses, the investigators may gather evidence through formal search and seizure processes to obtain documents and other evidence. Mutual legal assistance requests can also be made to the authorities in other countries for *inter alia* the collection of information and evidence, the location and handing over of suspects, and on-site inspections. An international tribunal and for that matter, the ICC may also receive and need to assist with similar requests from countries which are exercising national jurisdiction to prosecute war criminals (ICTY-UNICRI, 2009: 18).

Crime intelligence analysis is performed under the functions of "military analysis, political analysis and criminal analysis". During the pre-trial or investigative phase crime intelligence analysis is aimed at finding gaps in available evidence which

need to be covered by further investigations. The analyst becomes involved in field-work in the follow-up stage especially in obtaining documentary evidence through warrants (ICTY-UNICRI, 2009: 28). During the trial phase the analyst performs a monitoring and assistance role in view of his or her knowledge about the available evidence (ICTY-UNICRI, 2009: 28).

Of particular importance in war crimes investigations is that investigative teams need to follow a multi-disciplinary approach. Investigators with a police background, including those experienced in organised crime and financial investigations are required, but also military, criminal and political analysts, historians, demographers, forensic specialists and linguists (ICTY-UNICRI, 2009: 12). The range of specialists required is further illustrated in respect of exhumations. The Office of the Prosecutor in Kosovo alone was responsible for the exhumation of approximately 2000 bodies. The following experts are required to ensure that exhumations are performed in support of prosecutions: forensic pathologists; forensic dentists; forensic anthropologists; radiologists or radiographers; mortuary technicians; scene of crime officers and DNA specialists (Vanezis, 1999). In respect of the investigation of sexual offences within the context of war crimes, the following expertise is required: prosecution counsel, investigators, doctors, nurses, counsellors, interpreters, and witnesses' assistants, all trained on how to deal with victims of sexual offences (International Criminal Tribunal for Rwanda, 2008: 4).

Civilian intelligence agencies of especially major powers could assist Commissions of Inquiry, such as the above, as well as the investigative authorities of international tribunals or the ICC mandated to inquire into or investigate war crimes, genocide and crimes against humanity, with for example satellite imagery. Human rights observers raised serious questions about the US and other Western powers in relation to the Bosnian situation. The question is asked on whether the US had advance knowledge of the Bosnian Serb attack on Srebrenica and failed to warn the UN forces guarding the city. The US IC focused

on the war with vast resources, including spy planes, spy satellites, radio intercepts, and human sources in the region. The opinion has also been expressed that other Western intelligence agencies were slow in releasing evidence of Bosnian Serb war crimes committed during the four year conflict. Although the ICTY commenced its work in 1993, the intelligence agencies of the US, UK France and Germany only agreed on a policy of declassification of their information to assist the ICTY in early 1996, after "being shocked in action" by the "bloody fall" of Srebrenica. The realisation of what was happening in the Balkans evoked international response after the US in a controlled manner released intelligence (photographic material) to the UN Security Council on mass killings in the former Yugoslavia, which was gathered by U-2 spy planes. Furthermore, the discovery by spy planes and satellites of suspected mass graves prompted Western countries to prevent further bloodshed (Shanker, 1996). Following up hints that the IC in the US had advance warning of the attacks, and media reports confirming the existence of intercepts by the US IC, the ICTY's Chief Prosecutor, Richard Goldstone filed a formal request to the US for greater assistance by the IC to the ICTY investigations (Shanker, 1996).

Applying special investigative techniques such as the interception of communications by the investigators of war crimes under the ICC or an UN sanctioned tribunal is highly improbable, firstly because the crimes are in many cases committed years before being investigated. Secondly such an investigation method is specialised and involves expensive equipment usually only at the disposal of the IC's. The only source of intercepts which could be used by the ICC or similar tribunal is the national ICs of states. The same is true about IMINT.

4. CONCLUSION

There is a growing need in international organisations dealing with intelligence to become more independent from the member states involved in these organisations, which is also a requirement for the success of such organisations.

Both in INTERPOL and the UN, there is a tendency to gather and use especially OSINT in support of analysis. These international organisations can play a huge role on the policy and strategic level by having additional sources of information, independent of the individual Member States. Such independence is also important for transparency and avoiding abuse of the powers vested in international organisations through the manipulation of intelligence, or withholding of intelligence or disinformation. In respect of satellite imagery, the UN has accomplished a high level of independence. INTERPOL has established an unrivalled status for crime intelligence cooperation on regional and international level, capitalising on a network of cooperation agreements. This is not only in respect of the use of its secure communications in a controlled manner, but for a two-way exchange of intelligence which contributes to INTERPOL's ability to provide analysis and guidance in the coordination of information on all international crimes far beyond the competence of its individual Member States or of individual regions. It is clear that INTERPOL should further build on its relations to become totally inclusive of all countries globally and even to strengthen its ties with regional police organisations, and to play an active role in establishing more such regional police cooperation organisations.

In the UN structures, such as the IAEA, the need to establish an improved, open-source ability and strengthen intelligence analysis has also been identified. In respect of regional intelligence cooperation, it was mentioned that it is highly improbable even in a close-knit region such as the EU, that an independent EU intelligence organisation or 'FBI' will be established. The same is true with regard to an international organisation, such as INTERPOL. It is not likely that INTERPOL will develop an independent intelligence gathering capacity which will be empowered to gather intelligence other than OSINT. This is basically as a result of the sovereignty principle.

Concerning the investigation of war crimes, genocide and crimes against humanity, it is clear that an international organisation, such as the UN, could through an establishment such as the ICC with its investigative authority in the form of the Chief Prosecutor, investigate crime and gather crime intelligence in the same manner as any other law enforcement agency. The ICC and other international tribunals will remain highly dependent on national intelligence and law enforcement agencies for intelligence such as intercepts and also satellite imagery, despite the level of access gained to open-source satellite imagery by the UN. The ICTY has provided a highly developed model for intelligence gathering, analysis and use in the form of a manual developed in this regard. International organisations need to cultivate an improved sense of information security in dealing with sensitive information in order to build trust with national intelligence agencies to provide them with more detailed and sensitive intelligence.

In future, there might be an increased demand to extend the jurisdiction of the ICC to crimes other than war crimes, genocide and crimes against humanity. Should the jurisdiction of the ICC be expanded to all international crimes, the demand for increased cooperation between national intelligence and law enforcement agencies and the ICC would increase exponentially. For an increased effectiveness of international organisations, it is clear that national intelligence agencies and regional organisations should participate more actively in contributing to INTERPOL databases, use such databases, and effectively allow international organisations to add value to the intelligence picture through dedicated analysis of as broad as possible a data-pool.

In respect of positive intelligence, there is simply no comparative international organisation to what INTERPOL does in respect of crime intelligence. It seems that cooperation between positive intelligence and crime intelligence should be improved as much as possible on national and regional levels.

UN structures, in cooperating with national positive intelligence and crime intelligence agencies, must be careful not to be viewed as extensions of such national agencies, but must retain their independence and objectivity. The UN is also successful in the gathering of military type intelligence in respect of peacekeeping and peace enforcement.

In the next chapter of this study, which forms an evaluation, a summary of the study will be provided; the assumptions formulated in the Introduction will be evaluated; certain conclusions will be drawn, and models for increased intelligence cooperation on the national, regional and international levels will be proposed.