

CHAPTER 9

EVALUATION

1. SUMMARY

The main objective of the study as set out in Chapter 1, was to identify ways of improving intelligence cooperation between law enforcement (crime intelligence) and positive intelligence (civilian and military intelligence), in combating international crime, on the following levels:

- At national level, between the respective law enforcement agencies and positive intelligence agencies within a state.
- On regional level, between particular regional organisations and their member states.
- On international level, between member states and particular international organisations and their member states, as well as between such organisations and regional organisations.

A secondary objective was to identify and analyse the respective challenges or blockages which inhibit intelligence cooperation between crime intelligence and positive intelligence, in order to determine what can be done nationally and internationally to improve cooperation between crime intelligence and positive intelligence in combating international crime.

A further secondary objective was to compare the intelligence gathering techniques employed by crime intelligence, such as undercover operations, controlled delivery and surveillance, to the techniques employed by positive intelligence.

The study has been done with reference to the recent response (post-11 September 2001), to these challenges in respect of intelligence cooperation and sharing. Best practices, which on their own or in combination could be used to benchmark solutions for improved cooperation between crime intelligence and positive intelligence, have been identified to meet the above objectives. Proposals are made on how the sharing of intelligence, including “raw intelligence” can be improved on operational level.

Primary sources, including international instruments, legislation and government policies, jurisprudence, and reports of national and international commissions of inquiry have been used. Various secondary sources, including journal papers, media reports, and theses have also been used.

In pursuit of the above objectives, the study was structured as follows:

- (a) In Chapter 2 concepts such as international crime, transnational organised crime, intelligence, civilian intelligence, human intelligence, domestic intelligence, foreign intelligence, military intelligence, signals intelligence, technical intelligence, crime/criminal intelligence and strategic intelligence were defined within the context of and for the purposes of the study. War crimes, genocide, crimes against humanity and piracy are well defined in international law. It was pointed out that in international legal instruments there are no universally accepted definitions of international crimes such as terrorism and organised crime, whilst crimes required by such legal instruments to be established in national laws in respect of mercenary activities are limited, contain gaps, are ambiguous and are not suited to address recent developments. The extensive use by governments in conflicts of private military and private security companies in particular is not addressed in either the regional (AU), or the international (UN) instrument in this regard. The use by governments of mercenaries is therefore not adequately addressed in international law. Definitions for

terrorism and organised crime were proposed in Chapter 2. Law enforcement in respect of crimes relating to the proliferation of WMD is closely related to ‘international legislating’ in the sense of enforcement required by the international community of UN Security Council sanctions relating to WMD. The concept of intelligence cooperation was also defined to include the law enforcement, military and intelligence responses to international crimes as well as a combination of the said responses. Intelligence was defined within its respective meanings such as referring to respectively an institution, activity/process or product.

- (b) In Chapter 3 the change in the focus of intelligence in the post-Cold War era from a mainly military focus to drug trafficking, terrorism, organised crime, WMD, and in Africa, early warning (or rather warning intelligence), regarding conflict was described. The shift in focus to peacekeeping intelligence to support the peacekeeping and peace support operations of the UN was pointed out. It was observed in Chapter 3 that the 11 September 2001 events in the US revealed major intelligence weaknesses, amongst others an overly reliance on SIGINT and IMINT and a need for the US intelligence agencies to cooperate with smaller agencies of other countries with HUMINT capabilities. The need for improved intelligence cooperation in respect of international crimes is also evident in South East Asia. Furthermore, the international and regional international instruments which require states to cooperate in respect of intelligence to combat international crimes, including cooperation in respect of special investigative techniques were reflected upon, with reference to the UN, INTERPOL, the EU, including Europol, the AU, SADC and ASEANAPOL. It was pointed out that the strongest form of intelligence cooperation between states is on the bilateral level. In addition to international obligations, the drivers or incentives for intelligence cooperation were discussed, namely globalisation; utility or the success that can be gained from intelligence cooperation; the common threat

posed by international crimes; and increased expectations of the public to address such threats. Such drivers also include the availability of OSINT, commercial technologies, the sheer volume of intelligence as well as the ‘privatisation’ of intelligence. The intelligence-driven approach to law enforcement, common to many countries, demands intelligence cooperation on all levels, nationally and internationally. INTERPOL was identified as the common factor between states on regional and international level for crime intelligence cooperation. There is, however, much room for improvement in respect of intelligence cooperation on the regional and international level.

- (c) The challenges for cooperation between civilian and law enforcement intelligence were discussed in Chapter 4. Sovereignty (affecting cooperation between states as well as intelligence cooperation between member states and international organisations such as the UN) was identified as a major challenge in this regard. Within the context of sovereignty the issue of failed or “rogue” states in different typologies, and the effect of corruption on intelligence cooperation were discussed with reference to piracy in Somalia, terrorism in Pakistan, narco-terrorism in Colombia and corruption in Mexico. The precarious situation of international organisations not to be accused of spying on member states, whilst forced through involvement in activities such as peacekeeping to obtain intelligence is described. The use of states of sovereignty to their advantage to gather intelligence which would domestically be difficult or impossible to gather was also discussed, as well as extralegal actions such as renditions and the use of so-called “black facilities” for interrogation of suspects. The negative effect of such methods on intelligence cooperation was discussed as well as best practices developed to counter such negative effects. Other factors negatively affecting intelligence cooperation are differences in the approach of respectively crime intelligence and positive intelligence, interagency

rivalry, mistrust and the differences between the oversight mechanisms of crime intelligence and positive intelligence. The lack of standardisation both in respect of methodology (such as analysis) and even equipment and language differences was also discussed. It was pointed out that large scale data-sharing, the sharing of high grade intelligence and raw intelligence is seldom undertaken. The difference between intelligence and evidence was pointed out, as well as the difference between positive intelligence and crime intelligence in respect of focus and tasks, such as prevention as opposed to reaction. The concern of a lack of general standards for entering into intelligence cooperation agreements, the exchange of intelligence and requirements for political authorisation for intelligence exchange were identified. The effect of public/private relationships on intelligence cooperation and the informal obtaining of information from the private sector were also discussed.

- (d) In Chapter 5 the methodologies used by law enforcement (crime intelligence) and positive intelligence respectively, were discussed in order to find common ground for maximum cooperation between positive intelligence and crime intelligence, whilst focusing on law enforcement rather than military action. In respect of law enforcement intelligence the special investigative techniques of controlled deliveries, undercover operations, and surveillance, including electronic surveillance were discussed with reference to case studies in the EU, the UK and the US. The use of intercepted information as evidence in particular was discussed, with reference to the UK. The trends in positive intelligence, namely the centralisation of intelligence and the reliance on COMINT and SIGINT were also discussed. Whilst surveillance as practised by crime intelligence within the ambit of authorising legislation is not controversial, the scope of COMINT and SIGINT collection by positive intelligence is controversial with concomitant negative effects for cooperation in this regard between crime intelligence and positive intelligence. The extremely

wide-ranging and effective COMINT and SIGINT collection cooperation between the US, the UK and other partners was discussed. It is pointed out that the benefits thereof could be shared with crime intelligence on a strategic level and operationally to support for example interdictions and controlled deliveries. It was pointed out that cooperation between crime intelligence and positive intelligence should not be focused on court directed processes, but rather pure intelligence processes such as data-mining and bulk interceptions focused on operational support in combating international crimes.

- (e) Chapter 6 describes the models for intelligence cooperation on national (interagency) level, with reference to intelligence failures such as the ‘walls of separation’ in the US before the 11 September 2001 events between civilian and law enforcement (crime) intelligence caused by widely criticised domestic intelligence activities by the CIA and other intelligence agencies with a foreign intelligence mandate. The intelligence failures identified by commissions of inquiry, including inquiries into the intelligence failures surrounding the 11 September 2001 events and US and UK commissions of inquiry into how civilian intelligence agencies dealt with the issue of WMD in Iraq, as well as intelligence regarding the attacks on the London train stations were analysed. Various policies and strategies guiding military, crime and civilian intelligence and information sharing in the US and the UK were analysed and the concept of the fusion of intelligence discussed, including the weaknesses identified in respect of practical implementation of the concept. The common areas between the US and UK models of intelligence cooperation were identified. The elements of an ideal national model for intelligence cooperation were also identified as well as the elements of an ideal national model for intelligence cooperation.
- (f) In Chapter 7 of the study, models for intelligence cooperation on the regional level were discussed with reference to practical intelligence

cooperation and how factors inhibiting intelligence cooperation are addressed in furthering common interests. Europol as a regional crime intelligence institution, which also utilises the intelligence-led approach towards combating international crimes on a strategic as well as an operational level, was discussed. The Europol Crime Intelligence Model ensures intelligence cooperation not only between the EU Member States' national police forces, but also with customs authorities, financial intelligence centres, 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. It was pointed out that Europol is important in respect of a standardised approach to threat, risk and profile analysis and data access and distribution. Europol has established a trusted information environment, which was also pointed at as a crucial element for intelligence cooperation on the national level.

The most important elements of Europol intelligence cooperation were identified as joint cross-border operations and Joint Investigation Teams, coordinated by Europol and supported by a Joint Experts Network, which produced a manual for the setting up of JITs and for joint operations. Examples were pointed out where Member States of the EU have relinquished some degree of sovereignty in order to enhance their joint capacity to combat cross-border/international crime. The harmonisation of the roles of police officers in the respective Member States is a future goal identified for the EU. Reference was also made to civilian and military intelligence cooperation in the EU where the expansion of the EU led to a higher degree of mistrust, especially with the inclusion of erstwhile East bloc states with a legacy of repressive intelligence services. The role of NATO in coordinating intelligence with respect to joint military operations against international crimes such as terrorism and piracy was discussed. It was pointed out that the establishment of a "regional FBI" is highly

improbable. Proposals were discussed to overcome distrust. The ASEANAPOL model of crime intelligence cooperation was discussed, as well as intelligence cooperation in ASEANAPOL.

Civilian intelligence cooperation in Africa was subsequently discussed with reference to the ACSRT. The interaction with the Member States of the AU with the ACSRT through national focal points is one of the most important aspects of the ACSRT's role. In respect of civilian intelligence cooperation, the role of the CISSA in Africa was addressed as well as regional police intelligence cooperation in Africa. Mistrust and self-interest/sovereignty were identified as the most important stumbling blocks for intelligence cooperation on the regional level.

- (g) In Chapter 8 of the study, models for intelligence cooperation on the international level were discussed with reference to INTERPOL and the UN, in particular the use of UN commissions of inquiry and the investigations performed by the prosecutors of the respective UN tribunals and the ICC into war crimes, genocide and crimes against humanity. It was pointed out that intelligence cooperation on international level is far more advanced in respect of crime intelligence as opposed to positive intelligence, with no institution in respect of positive intelligence that could be compared to INTERPOL. The independence of INTERPOL, which is able to add value to intelligence to the extent that individual Member States are unable to do, was discussed. This independence is identified as the *crux* of INTERPOL's successful role in crime intelligence cooperation (Gerspacher, 2002: 24). This independence is enhanced by INTERPOL's links with other international organisations dealing with crime intelligence. INTERPOL's intelligence cooperation role is on the strategic as well as the operational level and covers intelligence cooperation in respect of all international crimes discussed in this study. The convergence between international crimes was shown, as a result of which so-called watch-

points, serving as focus points for intelligence cooperation is discussed (US, 2005(d)). The intelligence activities of the UN are discussed, with reference in particular to the combating of terrorism, the proliferation of WMD and war crimes. The need for the independence of international organisations to properly fulfil their obligations and not to be viewed as extensions of national intelligence agencies was underlined. The respective UN tribunals have been able to gather crime intelligence on war crimes successfully, but needs intelligence support from positive intelligence, especially in relation to IMINT and COMINT (ICTY-UNICRI, 2009) (Shanker, 1996).

2. TESTING OF ASSUMPTIONS ON WHICH THE STUDY WAS BASED

Assumption: Although the events of 11 September 2001 have led to increased emphasis on intelligence cooperation at the various levels, certain factors such as sovereignty and mistrust are still preventing more effective cooperation between crime intelligence agencies and positive intelligence agencies.

It is clear from the study that, despite various drivers for intelligence cooperation, such as common threats posed by international crimes such as terrorism, piracy, crimes related to the proliferation of WMD and transnational organised crime, sovereignty is the single most important factor inhibiting intelligence cooperation (Aldrich, 2004: 737). Intelligence lies at the core of national sovereignty (Herzberger, 2007: 101). This is true on the national level in terms of the ‘independence’ of intelligence agencies as well as the independence and focus on self-interest of states on the regional as well as the international level. On the national level this factor is evident from interagency rivalry and mistrust, as well as the difference in approach between crime intelligence and positive intelligence in respect of methodology, objectives and what is referred to as ‘organisational

cultures' (US, 2005(c): 288). Especially within international organisations such as INTERPOL and the UN, sovereignty is a major factor to be dealt with in respect of intelligence cooperation, where such organisations need to be seen to be objective and not to be 'spying' on their Member States. In order to fulfill their roles, such international organisations need to obtain some independence in even the gathering of intelligence even if it is just open source intelligence (Gerspacher, 2002: 24). Some UN established institutions need to act fully as intelligence gatherers, for example the prosecutors and their investigators attached to the criminal tribunals established by the UN Security Council to investigate war crimes.

Mistrust is indeed, as is shown in the study, even after the 11 September 2001 events, still one of the major stumbling blocks in intelligence cooperation. The issue of mistrust is the most notable on the regional level within the EU, where huge strides have already been made in respect of both positive intelligence cooperation and crime intelligence cooperation (Walsh, 2006: 625, 638). Formal and informal agreements on intelligence cooperation are valuable tools to overcome mistrust in intelligence cooperation. It is shown in the study that there are also other factors having a profound effect on international intelligence cooperation, such as corruption and the phenomenon of failed or dysfunctional states, as is evident from the examples mentioned in respect of the combating of piracy and drug trafficking and terrorism with reference to Somalia and Afghanistan respectively (Björnehed, 2004: 309).

It is shown in the study that states have a huge resistance to multilateral pooling of intelligence, especially very sensitive data, as a result of security concerns (mistrust) as well as self-interest (sovereignty). In some cases states are prevented from sharing intelligence as a result of constitutional constraints. It is pointed out that states are also reluctant to become dependent on other states for intelligence (Aldrich, 2004: 237, 741).

The greatest risk of intelligence cooperation is the increased threat of espionage and counterespionage. At the heart of a reluctance to share ‘hot’ intelligence, is often the lack of political will to do so, as is also evident in the EU (Herzberger, 2007: 1). Intelligence sharing on the regional or international level is most frequent where there are clear incentives in terms of political or other gains from such sharing, or where states know that they share the same policies; that they desire the same outcomes from the intelligence sharing; and where they have confidence in the accuracy of the shared intelligence (Fagersten, 2007: 14).

The different organisational cultures amongst intelligence agencies may lead to distortion or withholding of information; turf battles; agencies taking credit for successes derived from intelligence received from another agency without recognition given; and competition as a result of fragmentation. Through competitive intelligence gathering intelligence agencies effectively undermine each other (Boardman, 2006). The non-sharing of intelligence on the other hand may lead to mistrust and refusal of future cooperation. The classification and in particular over-classification of information by agencies is a factor that may severely hamper the sharing of intelligence. The transfer of police data is described as a ‘legal minefield’ as a result of different structures of protection accorded to personal information in respectively the US and Europe, with strict data protection laws in the latter.

Despite being aware of the problem of institutional differences between law enforcement and positive intelligence and interagency rivalry, it is one of the most difficult issues to address and some form thereof will probably always be experienced.

Whilst the different intelligence agencies must therefore relinquish some authority for the sake of joint planning, but retain operational responsibility, it is 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, remain inhibiting factors.

The assumption that sovereignty and mistrust still prevent more effective cooperation between crime intelligence agencies and positive intelligence agencies can therefore be verified.

Assumption: Broad intelligence cooperation and sharing in respect of covert action and covert operations are highly unlikely.

Covert action includes assassination, propaganda, political interventions in the political process of the target nation, the use of covert economic measures against a state, the instigation of a *coup* in another country, support of paramilitary actions and secret participation in combat (Jansen van Rensburg, 2005: 22). Covert action by nature is highly controversial and different opinions exist as to whether it could indeed be regarded as part of intelligence (Shulsky & Schmitt, 2002: 96). The use of covert action to combat crime remains a controversial issue.

The exercising of extraterritorial powers by one state may not only be illegal in another state, but may also cause a loss of trust where intelligence cooperation or intelligence sharing lead to extraterritorial actions which are controversial and sometimes regarded as unethical or inconsonant with international law, relating for example to torture.

The practice of the US to perform so-called 'renditions' which could include any extra-judicial transfer of persons from one jurisdiction or country to another, for a variety of purposes, from prosecution to interrogation and extraordinary rendition which may include torture, as well as detention in special military facilities, is an example of covert action with negative consequences for future intelligence cooperation (Wilkinson, 2006: 164) (UK, 2007(a)).

The negative effect of covert or clandestine operations, such as extralegal rendition and sometimes assassination of terrorist targets is one of the most significant threats to international intelligence cooperation. Although such actions may result in successes for the countries executing them, it in numerous instances led to embarrassment for countries that cooperated and to subsequent policy decisions on the highest level not to further allow cooperation in respect of such actions. This is true even amongst the closest partners in intelligence cooperation, such as the US and the UK (UK, 2007(a)). Intelligence cooperation aimed at pure law enforcement actions seems to have the best chance for success. It is, however, in many instances imperative to be able to utilise the intelligence support of civilian and even military intelligence in order to ensure successful investigation of, or the prevention of international crimes.

Military action is in some instances the only option to act in respect of for example war crimes, piracy and terrorism, in which case action should preferably be based on resolutions of the UN Security Council. Covert action will always remain controversial, especially assassinations. The innovative use of military force in an overt manner by means of direct action, which is in line with international law, is supported (Berkowitz, 2003: 133). Even the interrogation programme through which some suspects were detained for months or years in Guantánamo, carried out by the CIA, has been condemned by US courts and had a negative effect on future intelligence cooperation which could lead to incarceration and interrogation or torture (Piret, 2008: 102).

The assumption that broad intelligence cooperation and sharing in respect of covert action and covert operations are highly unlikely is therefore verified.

Assumption: Intelligence cooperation needs to be very focused in terms of methodology, mainly clandestine intelligence gathering methods, especially human intelligence, within the context of special investigative

techniques of controlled deliveries; undercover operations; and surveillance, including electronic surveillance.

Due to the differences between the methodology used respectively by civilian and crime intelligence, the focus of intelligence cooperation should be on special investigative techniques.

As a result of the concept of intelligence-led policing, police services are viewed as part of the broader IC. The importance of positive intelligence keeping law enforcement informed is gradually realised.

Police undercover operations can be regarded as being more similar to clandestine operations. The confidentiality of undercover operations mostly needs to be maintained for a limited time only, whilst in covert action the identity of participants normally needs to be protected indefinitely. SIGINT collection by positive intelligence is the most likely area for cooperation between law enforcement and positive intelligence. This would require law enforcement to share their targets with positive intelligence for flagging in dragnet processes such as bulk interceptions and data-mining. However, the focus of such cooperation would seldom be in terms of obtaining evidence- rather in operational or tactical support of special investigative techniques and mostly for crime prevention or interdiction actions. Such cooperation could also be supportive of joint legal and military action, as in being able to respond to piracy and terrorism, the identification of opportunities for controlled deliveries, or to identify targets for further court-directed attention through special investigative techniques.

In view of different responses available to combat international crime, it is important to keep in mind that it is not only a matter of how law enforcement could be supported or strengthened by positive intelligence agencies, but rather how, as far possible intelligence capabilities and available information could on

national, regional and international level be pooled (fused) to ensure that the most appropriate and effective action in the circumstances is taken against international crime (US, 2006(c): 1 – 4). The intelligence available through law enforcement investigations might be critical for use in respect of military operations.

The Netherlands and Belgium were identified as countries using the ‘full panoply of special investigative techniques’ and legislation in those countries can be regarded as model legislation in this regard (De Koster, 2005: 16).

It is pointed out in the study that it was realised that US intelligence, despite its technological capabilities regarding imagery and interception, needs to be assisted by smaller intelligence agencies with HUMINT capabilities. The US even experienced a lack of interpreters in foreign languages. The US realised it could provide training and other assistance to foreign agencies, in exchange for HUMINT, intelligence sharing or being allowed to use foreign territory for surveillance, rather than relying only on their own HUMINT capabilities (Reveron, 2006: 454 – 455).

The assumption that intelligence cooperation needs to be focused in terms of methodology is therefore verified.

Assumption: By operating in an incremental fashion, and on a project basis, trust can be built between the respective actors in order to promote future intelligence sharing.

The study clearly shows that excellent successes have been achieved in combating international crimes especially transnational crime, through joint investigative teams focusing on crime threats identified through bilateral and multilateral cooperation arrangements. This is the case in the EU through

Europol, with its JITs, the ASEAN region through ASEANAPOL and in Southern Africa through the SARPCCO arrangement.

Regional law enforcement organisations do play an important role on both the operational and strategic level through multilateral crime threat analysis, identifying projects to address such joint crime threats and then operationally supporting such operations. It has been shown in the study that there is usually more trust between agencies where joint threats are addressed.

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 others' countries. The establishment of JITs, as provided for in the EUROPOL model, is of particular importance for regional intelligence cooperation within the context of the investigation of international crime (Europol, 2009(a): 18, 19, 24, 25).

The assumption that future intelligence sharing can be promoted through an incremental building of trust on a project basis is therefore verified.

3. CONCLUSION

Sovereignty and distrust still hamper intelligence cooperation in combating international crime. Much can be done on national, regional and international level to improve intelligence cooperation to combat international crime. The solution to better intelligence cooperation between positive intelligence and crime intelligence implies the implementation of a combination of proposals. The intelligence culture of a 'need to know' needs to be substituted by a culture of a 'need to be informed' on the national, regional and international levels.

The following proposals are made to enhance intelligence cooperation on the national level, namely that an ideal or model national interagency intelligence system should have the following elements:

- A comprehensive framework for intelligence should be established, including an office with overall power in respect of the whole IC, inclusive also of law enforcement (crime) intelligence. There must be a national coordination mechanism on which all agencies are represented. Duplication of intelligence structures with overlapping mandates must be avoided by integrating such structures into a single unit. Policies to delineate the respective role of the agencies in the positive IC and crime intelligence spheres, as well as to address attitudes in relation to intelligence must be in place. Secure communications lines must be established as well as secure databases and security enhanced by vetting and controlled access to databases (create a trusted information network). There should be a similar if not the same accountability or review system in respect of the activities of the whole IC. There must be a reward system in place to award sharing of information or intelligence.
- Policing must be community based and intelligence-led and information gathering should be closely linked to communities, involving civil society. Fusion of intelligence should take place on the local as well as regional and national levels. Intelligence focus should not be limited to terrorism, but also serve local communities, by following an all-crimes approach. Law enforcement focusing on international and transnational crimes should function on a multi-disciplinary basis with powers of police, immigration and customs integrated into the same agency. Cooperation should also take place between law enforcement and the prosecution, from an early stage of the investigation. Legacy teams should continuously review previous operations for identification and follow-up of leads that might have been overlooked.
- There should be the maximum degree of fusion or integration of intelligence efforts between crime intelligence and positive intelligence on

- the national level as such cooperation is difficult on the regional and international levels.
- States need to provide in their national laws for powers for law enforcement for the use of special investigative techniques such as undercover operations, controlled deliveries and surveillance, including electronic surveillance as well as the use of evidence obtained through those techniques in prosecutions, even where the evidence is obtained in different jurisdictions.
 - The safeguards developed for MI5 and MI6 in the UK can be viewed as best practices to counter the negative effects of cooperation in respect of covert action such as extralegal renditions. These safeguards are aimed at the prevention of cooperation which may culminate in the use of torture or mistreatment.
 - Intelligence support to crime intelligence by positive intelligence must focus primarily on COMINT and SIGINT, in view of the wide-ranging powers and capacity of positive intelligence in that regard. Such support need not be for court purposes, but could be used to identify opportunities for interdiction of huge shipments of contraband, the location of wanted suspects and in general to provide intelligence leads that could be followed up through special investigative techniques in a court-directed manner.
 - Institutional differences between intelligence agencies could be overcome through structural changes and by promoting a culture of a need to share rather than need to know.

In order to improve intelligence cooperation on the regional and international level, the following guidelines are proposed:

- International organisations should focus on collection and analysing open-source intelligence in order to enhance their independence, without endangering their objectivity and impeding on the sovereignty of their member states. 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.

- Further development of the international legal framework, especially in respect of international obligations to combat mercenary activities is required. National intelligence and law enforcement agencies should improve their assistance in respect of intelligence such as intercepts and also satellite imagery, to the ICC and other UN criminal tribunals investigating war crimes. The manual developed by the ICTY for intelligence gathering, analysis and use can be regarded as a comprehensive and useful model for the ICC.
- Trust can be built on an incremental basis within an international and regional context through joint crime threat analyses and joint operations supported operationally by regional and international organisations.
- The focus for intelligence cooperation on the international level should be on bilateral level where the level of trust is the highest.
- International law in respect of defining mercenary crimes must be improved to address the extensive use of private military and security companies by governments in conflicts.
- States which have not yet become parties to major international instruments relating to international crimes need to be encouraged through multilateral fora to become party to such instruments and to incorporate the crimes required to be adopted in terms of those international instruments in their national laws.
- Covert action should, however, not be regarded as a priority area for regional or international intelligence cooperation.
- Regional intelligence cooperation organisations should establish 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.

- The placement of personnel from member states of the respective countries stationed at the regional and international organisations is identified as a good practice to provide a spectrum of expertise and access to national agencies and their databases, through established protocols. The practise of placing police liaison officers or legal attachés in cooperating countries to promote crime intelligence cooperation also largely enhances crime intelligence cooperation.
- The African model of regional police cooperation with INTERPOL providing secretariat services, to and CISSA enhancing intelligence cooperation between the civilian intelligence services of most countries on the African Continent, can serve as a model for other regions.
- The independence of regional and international organisations involved in crime intelligence should be promoted, as well as the building of capacity in such organisations to collect and analyse OSINT. These international organisations can play a huge part 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. INTERPOL has established an unrivalled status for crime intelligence cooperation on regional and international level, capitalising on a network of cooperation agreements. It is clear that INTERPOL should further build on its relations to become totally inclusive of all countries globally, strengthen its ties with regional police organisations, and even to play an active role in establishing more such regional police cooperation organisations. It is, however, important that Member States should maximally use the secure communications network of INTERPOL for the exchange of crime intelligence, and contribute to and use INTERPOL's databases and systems such as the MIND/FIND system.
- There is a need for an international instrument on intelligence cooperation to combat international crime. A draft document in this regard is proposed

and attached as an Annexure. Aspects of intelligence cooperation and in particular information exchange, are captured in various international instruments, such as the *United Nations Convention against Transnational Organized Crime* and various counter-terrorist Conventions. The forming of joint investigation teams, for example is also covered in the *UN Convention against Transnational Organized Crime*. (UN, 2004(a): Article 19). The usefulness of the provision for such joint investigation teams is, however, then confined only to transnational organised crime, whilst the concept would be made applicable to all international crimes if included in a general intelligence cooperation convention. The proposed draft convention may also serve to consolidate intelligence cooperation in respect of all international crimes related to security. The concept of international joint investigations is relatively new and is not reflected in most international instruments on international crimes.

The convergence of international crimes and the watch-points developed to focus intelligence cooperation must be taken into account. There should therefore on both the national and the international level be an all-crimes approach to intelligence collection and analysis.