IAP Annual conference

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SEPTEMBER 10-15, 2017

PROSECUTION IN THE PUBLIC INTEREST

Facing the challenges and opportunities in changing societies

Collected Outcome Reports from the Session Rapporteurs
Foreword

We are delighted to present to our members this collection of outcome reports from the plenary and parallel sessions of the 22nd IAP Annual Conference. It is the first time that the IAP Annual Conference presents outcome reports from all of its plenary and parallel sessions. It is a collaborative effort. Each session report and its descriptions, views and conclusions, is the product of the session rapporteur in question. We have not changes the views or conclusions. The collection is presented to you as a true reflection of the global diversity that comes together during the Annual Conference.

All the rapporteurs deserve a special thank you. They all play an important role during the conference, taking extensive time and effort to document the session activities and to communicate the relevant conclusions and suggestions of the sessions. We are deeply thankful for their contributions.

In the following, the individual reports are organized thematically. They are linked to the original professional programme of the conference by reference to the date and time of the session. The professional programme is available on the IAP website and the conference website.

It is our hope that this collection of outcome reports will assist our members in the continued engagement in the many important issues discussed during the conference until we meet again in Durban, South Africa for the 23rd IAP Annual Conference and General Meeting in September 2018.

Gerhard Jarosch
President of IAP
Overall outcome report

The 22nd IAP Annual Conference brought together prosecutors from every region of the world. 431 prosecutors from 99 states and territories were present. The goal was to strengthen the transnational communities of prosecutors and prosecution services and to strengthen our platforms for transnational cooperation, to raise the capacity of prosecutors in particular important areas of crime and punishment and to raise the awareness of the professional standards governing criminal justice. The delegates were deeply involved in the four day long professional programme. 160 speakers, chairs and rapporteurs facilitated 36 plenary and parallel sessions, workshops and roundtables. Furthermore, as a testament to the strong partnerships the IAP has with other international governmental and non-governmental organizations, the conference benefitted from co-sponsored workshops and sessions with the International Association of Judges, ICT4Peace, ICAR, Open Society Foundation, United Nations Counter-Terrorism Executive Directorate and the United Nations Office on Drugs and Crime.

The IAP Annual Conference serves as a productive forum for transnational legal cooperation. The Beijing conference hosted hundreds of formal and informal bilateral meetings, as the packed calendar of the available meeting rooms and the exchanges of contact information and signing of numerous MoUs serve to testify. It shows that the IAP is moving ahead towards its goal to have the annual conference to serve as an effective ‘one-stop-shop’ for prosecution services’ transnational legal cooperation arrangements.

The special theme of the 22nd IAP Annual Conference was “Prosecution in the Public Interest” and how we, as prosecutors, can adapt to global developments and maintain prosecution in the interest of the public. Three questions were addressed: How can we, in our investigation and in our prosecution work best respond to the increasing digitalization of public and private life, to the increasingly transnational nature of crime and to the fact that an ever-increasing proportion of people live in cities? The questions were framed and developed in the opening ceremony and session by the distinguished speakers Cao Jianming, Prosecutor General of the Supreme People’s Procuratorate, P.R. of China, Zhang Dejiang, the Chairman of the Standing Committee of the National People’s Congress (NPC), P.R. of China, the IAP President Gerhard Jarosch, the President of Interpol Meng Hongwei, and David Scharia, Chief of Branch, CTED, United Nations Security Council.

Mutual Legal Assistance
The work across borders and its new dimensions have been central to our activities throughout the year. Several of the conference sessions was dedicated to this important topic. In and of itself there is nothing new about the need to work across borders. The ‘new’ lies in 1) the drastic increase in cross border requests for mutual legal assistance (MLA), 2) the expanding and complex regulatory frameworks through which we operate, 3) the frequent simultaneous involvement of multiple jurisdictions in the securing of evidence, 4) the increasing need to involve non-state agencies in securing evidence. We will do well to recall that these changes are recent and that the
technological advances relevant both to causes of this development and to potential solutions are no more than a decade old. We are very much in the beginning stages of finding the right solutions. One plenary speaker aptly described the “need to improve, and rethink, our models of international mutual legal assistance”. The first plenary session, three workshops and this year’s new MLA laboratory – open throughout the conference – dived into the challenges and possible solutions both in the short term and the long term. Among the important short term recommendations communicated by the MLA experts running the MLA laboratory, were the need to:

- Streamline the process and interaction internally between prosecutors and Central Authorities
- Increase the availability and use of technical assistance to MLA procedures both internally and transnationally
- Increase the availability of user-friendly manuals for MLA
- Enhance the constructive role of Central Authorities
- Ensure early communication and engagement
- Make effective use of professional networks

The outcome report of the MLA Laboratory and plenary session is included below.

**Digitalization**

The increasing digitalization of our lives affect most activities of prosecutors. The need for us all to adapt to this development is omnipresent. As is well demonstrated in several jurisdictions, the development is fast and we need to work in partnerships – also with the technology industries – to keep up and to ensure access to the necessary tools to prevent, to investigate and to bring cases to court. The question arises of how to arrange and manage these partnerships so to ensure accountable investigation and prosecution. Of equal importance is the digitalization of the administration of investigation, prosecution and judicial decision-making. The provocative title of one of the sessions, “Can prosecutors be replaced by artificial intelligence?” is in some ways more relevant than we tend to realise. Today, numerous software products that are capable of handling major and complex factual material as well as carrying out legal analysis, are available and employed by law firms worldwide. Many courts already employ software that perform risk assessments of individual offenders and patients (custody decisions). Linguistic software tools already assist prosecution services in some countries in direct translations and automatic report writing. It is difficult to see where this development ends and needless to say we need to keep up. But – and there is a but – as the plenary sessions made clear we also have to be very careful to retain the established principles of law and justice. It took centuries to develop the current principled approach to criminal justice and it requires hard work to maintain it. Big data, digitalization and the need for efficiency must not change that. As we adapt to the digital era we must bring with us established principles of law and justice.

**Big Cities**

A third global development concerns the increasing number of major cities. More than 50 % of the world’s population lives in cities and the number is growing. The conference brought particular attention to the challenges pertaining to identifying and representing the ‘public interest’ in an increasingly diverse and often conflicting public, and in setting up city prosecution services that manage to reach out to all geographical parts of cities and groups of people. One special workshop challenged the social technologies of handling radicalisation in big cities, in investigating security related crimes and ensuring trust in subgroups of populations.
Prosecution in the Public Interest
The conference brought together the many issues related to the ‘public interest’ in a keynote session on ‘public interest and prosecution’ and in the final session on ‘public interest, integrity and anti-corruption’. The sessions developed and facilitated discussions on how ‘public interest’ imposes a functional limit on the work of prosecution and requires a responsiveness to societal developments as well as to the complexities of diverse populations. The final sessions also gave examples of difficult cases of reflecting public interests in prosecution work. A crucial distinction between the role of prosecutors working on criminal cases versus their role in policy making was presented. Practicing prosecution should not be an extension of policy making but of legislation. At the same time, the prosecution service has a unique position to observe practical developments and practices in the justice system and an opportunity to inform policy-makers and legislators of these developments and practices and of their consequences for the functionality of the criminal justice system. In this way, prosecution services have a real ability to shape and influence the information that impact on public policy.

Special Interest Groups
Again, this year, the Annual Conference expanded its range of special workshops, giving specialist prosecutors a place to meet and discuss cutting edge developments and to come together around strengthening their global communities. Special workshops were facilitated in:

- Cybercrime
- Counter-terrorism
- Environmental Crime
- Military Prosecution
- International Criminal Justice and Conflict-Related Sexual Violence
- Trafficking of Persons
- Anti-corruption, money laundering and asset recovery
- Prosecutors’ Associations
- Prosecutors’ Exchange Programme

The workshops are further described in the individual reports below.

This year, special attention was also paid to the respect for human rights and professional standards of prosecution and on how to bring standards to life. One session was arranged to discuss how to bring professional standards of prosecution services to life. Furthermore, one session took up the question of how to ensure integrity in prosecution services and the challenges of developing integrity standards and institutions to enforce them. Finally, one session brought together comparative research into the role of prosecutors during pre-trial stages and particularly pertaining to the prevention and investigation of torture. The individual session reports are provided below.

The input from the sessions, discussions and reports feed directly into the working programme of the IAP. Many of our special interest group have ongoing programmes and use the conference for ongoing projects. Of projects of more general nature that the IAP takes upon itself to focus on in the year to come are:
- Further developing the IAP database with MLA contact points in IAP member prosecution services worldwide
- Carry out the 3rd Siracusa specialization course
- Continue the collaboration with global and regional partners to secure relevant and up-to-date practical tools for prosecutors
- Prepare a draft guideline and/or a best practice collection on the appointment, tenure and removal from office of prosecutors

In the following, the reports from the individual sessions are reproduced. If you have any questions to the overall outcome report and professional programme, you are welcome to contact the IAP General Counsel, Rasmus H. Wandall (gc@iap-association.org).
JUDICIAL COOPERATION

First Plenary Session: JUDICIAL COOPERATION: Where are we heading in a digital age?
Monday 11 September @ 11 AM

Chair and Discussant: Mike Chibita, Director of Public Prosecutions, Uganda

Speakers: Michèle Coninsx, President of Eurojust; Saak Albertovich Karapetyan, Deputy Prosecutor General of the Russian Federation; Bruce Swartz, Deputy Assistant Attorney General, US Department of Justice, USA; Sheikh Saud Ibn Abdullah Al Muajeb, Attorney General of the Kingdom of Saudi Arabia.

By Maxine Jackson, Deputy Director of Public Prosecutions, Jamaica, Rapporteur.

It is indisputable that within the last couple of decades our world has become a better place in light of the advancement in technology. Criminal groups on the other hand have wasted no time in embracing this modernization and as a consequence have created significant challenges to law enforcement officers in their fight to combat trans-border crimes.

The presenters being attuned to this reality have asserted that in today’s digitalized world there is urgent need for new approaches to international co-operation in criminal matters that go beyond those traditional means that as practitioners, we have slavishly held firmly unto. They advocated that approaches must embrace courage, intellectual dexterity and innovation, speed, solidarity, mutual responsibility, efficiency, trust, will and confidence.

The presenters gave us an insight to some of the challenges within their own jurisdictions within digitalized age because of the continued use of the traditional means of judicial cooperation. They articulated these challenges as being the differences in legal systems, the slow pace in dealing with urgent requests, the submission of vague requests, late communication on requests delivered, the absence of a response from Central Authorities and poor communication among central authorities and the failure to accept or act on a request submitted via electronic means. They recognized that these traditional means have become obsolete in the digital age.

They further noted that because the internet, on the other hand is borderless, the organized criminal groups have been able to hide information in the clouds, capitalize on the use of encryption, and the darknet to trade, hide services, purchases and to use crypto currency launder money. These means, the presenters all agreed provide safe designations for organized crime groups to capitalize on the high degree of anonymity, thereby rendering traditional investigative techniques in judicial cooperation less effective.

The panellists have also made it clear that an effective system of judicial cooperation in this digital age must not only seek to get the much-needed evidence, but must be able to do so in a timely manner. Accordingly, as a solution they argued that with the rapid development in technology, the
training of law enforcement officers and prosecutors are critical to the process. Importantly, creating that necessary link between stakeholders such as private entities and public entities and have adverted to need to have greater co-operation between them as well as the standardization of the rules of engagement between the two entities. The inclusion of the private sector, they all agreed is imperative in this digital age, in light of their dominance of the social media market. In his regard, the USA is now seeking to place before the House a Bill intended to allow direct contact between Central Authorities and internet service providers, thus reducing time wasted in engaging a third party before getting to the service provider. Ms Coninx, in her presentation, also alluded to this fact, when she pointed out that with the overturning of the Data Retention Directive by the European Court of Justice (CJEU) in April 2014, there have been uncertainties as to the possibilities of how to obtain data from private parties.

In concluding, it is clear from all the presenters that the digital age has come upon us like an avalanche and equally has posed considerable challenge to the traditional status quo with regards to international cooperation which necessitates an urgent shift from the traditional approach to a more embracing approach which is rooted in innovation, dexterity, communication and trust.

Digital evidence and judicial cooperation

Wednesday 13 September @ 11:40 AM

(Workshop) Chair: Satyajit Boolell, IAP Vice President, Director of Public Prosecutions, Mauritius, Speakers: Constantin Virgil Ivan-Cucu, Senior expert EuroMed Justice and Senior Lecturer EIPA Luxembourg, Artur Davtyan, Prosecutor General, Armenia, Ganzorig Gombosuren, Head of the International Cooperation Department, Office of the Prosecutor General, Mongolia, Liu Pinxin, Deputy Director General, Procuratorial Technology and Information Research Center of the Supreme People’s Procuratorate, P.R. of China (Professor of Renmin University of China).

By A. M. Radwan Kenawy, Office of the Prosecutor General, Arab Republic of Egypt, Rapporteur.

The use of information and communications technologies is increasing significantly and hence gathering digital evidence is one of the most common challenges prosecutors around the world are facing nowadays. There can be no doubt that the international nature of digital evidence requires judicial cooperation and therefore there is an international awareness of the need for coordinated action.

The Euromed Justice Project focusing on the field of countering terrorism, which entails administration of digital evidence that is most probably held with communication service providers in foreign countries. Collecting this kind of evidence requires a degree of harmonization of procedures in different countries. Achieving such a harmonization on a regional level might be a great beginning for a greater harmonization on an international level in the future. The Euromed project will begin by developing a common manual for authorities to address requests for digital evidence to internet service providers in 2018, providing a digital reference tool to help putting forward MLA requests in complex cross-border cases by October 2018, and finally by creating an internet Portal Gateway containing the main databases of national and international legislation, applicable rules and procedures, as well as the contact details of the contact points.
In Armenia, they have a system that is similar to many other countries as the need for international cooperation is increasing each day. Awareness of the importance of Digital Evidence and the need to combat cybercrime has lead to two task forces being created to fulfill the Armenian obligations according to the Budapest Convention as well as other mechanisms to help accepting MLA requests and to speed up the procedures in this regard. Examples were given on forms of mutual legal assistance. In particular, the case of recovery of cultural heritage (70 million years old dinosaur fossils) and the judicial cooperation between the Mongolian and South Korean authorities was developed and serve to prove the importance of bilateral cooperation and the efficiency of direct contact via emails and calls to speed up the process and realize shared goals.

Digital evidence, the access to it, the securing of it, and the use of it, has emerged as one of the most pressing matters in a digital era of judicial cooperation. Digital evidence has different characteristics and according to scholars worldwide, the crossborder characteristic is one of its generic characteristics. Although collecting evidence from different countries presupposes respecting the laws in each of these countries, using alternative techniques other than judicial cooperation such as remote investigation and cross border searches can have egregious effects. The fact that law enforcement officers consider the Internet as a crime scene can end up in a virtual world without boundaries and most probably will violate the sovereignty of other countries while collecting evidence and even can be considered as a crime in the country in which sovereignty is threatened. Furthermore, forced disclosure technique adopted by the Budapest convention is a challenge when it comes to operators registered in other countries. The argument can be made that there is an urgent need for all countries to agree on an international framework regulating judicial cooperation in digital evidence.

Falsified medicine and judicial cooperation

Wednesday 13 September @ 11:40 AM

(Workshop) **Chair:** William Tam Yiu-Ho, Deputy Director of Public Prosecutions, Department of Justice, Hong Kong SAR. **Speakers:** Bernard Leroy, Director, IRACM, Karen Kramer, Senior Crime Control and Criminal Justice Officer, UNODC, Kourouma-Guìro Saboré, Deputy Director of Criminal Affairs and Pardons, Côte d’Ivoire.

By David J. Dickson, Head of Extradition, European Judicial Network Contact Point, International Cooperation Unit, Crown Office and Procurator Fiscal Service, Scotland. **Rapporteur.**

It is estimated 700,000 people die annually as a consequence of the ingestion of false medication. This workshop disclosed the scale of the largely unknown trade in false medication, principally made available in Africa, where the drugs are sold in street markets. The medication is ineffective either by out of date drugs being repackaged or wholly inadequate amount of true medication included in manufacture. In May 2017, the World Health Organisation agreed a definition of false medication as “Medical products that deliberately/fraudulently misrepresent their identity, composition or source” ([http://www.who.int/medicines/regulation/ssffc/definitions/en/](http://www.who.int/medicines/regulation/ssffc/definitions/en/)). The experience in Cote D’Ivoire is that in 2017 a Chinese national was found to be producing 500 tons of false medication in a factory in Abijdan; someone found in possession of 45 tons of false medication was sentenced to 12 months imprisonment. To date in 2017, 147 tons of fake medication has been seized. The ordinary cost of medication in these states is prohibitive and, as such, contributes to the illicit trade. That trade is significant being estimated to make a profit twenty times greater than traditional drug dealing: 95%
of the false medication is sourced and distributed by organised crime gangs. 50% of medication sold on the internet is false. The principal source of manufacture of the false medication is China, with the drugs being traded through India and then onwards. Repackaging of the drugs has taken place in Belgium with 2m false drug entering the UK market. These drugs were only detected as a practitioner noted the number sequence on the packaging was one number out of sequence and a patient noticed the printing on the blister pack rubbed off. There is inconsistent legislation across states with either an absence or inadequacy of domestic legislation establishing criminal responsibility or where legislation is available, it is such as to not be amendable to international, multilateral treaty provisions to enable mutual legal assistance or extradition mechanisms to be utilised, in investigations which by their nature are inevitably cross jurisdictional. The UNODC is seeking to replicate the success of the European judicial Network and establish a similar model of cooperation across affected states. The absence of recognisable central authorities in states contributes to the difficulty but there is considerable enthusiasm and cooperation within affected states to establish an effective mechanism for cross border criminal judicial cooperation. In addition, the UNODC has assisted West African Network of Central Authorities and Prosecutors against Organised Crime (WACAP) to train 113 practitioners from all WACAP member States were trained on international cooperation procedure. ([https://www.wacapnet.com/content/homepage](https://www.wacapnet.com/content/homepage)). Given the significant number of deaths and the general lack of awareness of the trade in false medication, raising the issue at a forum such as the International Association of Prosecutors is a welcome step.

**Mutual Legal Assistance – feedback from the MLA Laboratory and discussion**

**Thursday 14 September @ 2:30 PM**

(Plenary) **Chair:** Rasmus H. Wandall, General Counsel of IAP, Denmark. **Speakers:** Thomas Burrows, Senior Counsel for Multilateral Matters, Office of International Affairs, US Department of Justice, USA, Rosa Ana Morán Martinez, Fiscal de Sala de Cooperación Internacional, Prosecutor of the Supreme Court, Head of the International Cooperation Unit GPO, Spain, Yuval Kaplinsky, Director, International Department, Office of the State Attorney, Ministry of Justice, Israel, Biswalo Mganga, Director of Public Prosecutions, Tanzania, Nicola Yang, Head of Mutual Legal Assistance, Crown Prosecution Service, England and Wales, Dimosthenis Chrysikos, UN Officer, UNODC, Guirguis, Kamel, First Advocate General, Head of international cooperation division of the Prosecutors general’s office of Egypt.

**By Gavin Shiu, Solicitor and Barrister at Law, Hong Kong, Rapporteur.**

A Mutual Legal Assistance laboratory or MLA lab was held for the first time at the 22nd Annual Conference. The purpose was to allow delegates to discuss with MLA experts and for delegates and experts alike to test ideas for how to approach current practical and legal challenges.
The MLA lab was held daily during the morning breaks in the Conference. It took the form of an informal meeting area that offered a venue for delegates to meet with the expert members of the MLA lab. It was well attended by interested delegates. The chance to talk informally amongst peers; to exchange views and experiences across jurisdictions; and swap information was invaluable. The MLA lab members reported that many delegates approached them during breaks to discuss matters in more depth. One expert received an MLA Request from a delegate during the conference.

At the end of the Conference the experts reported back to the Conference Plenary on the matters raised at the MLA lab and their distillation of the views of the delegates that attended. Recommendations to aid mutual legal assistance were formulated and aired in the verbal reports to the Conference Plenary on 14 September 2017.

Recommendation One

Background: Issues arose over the central authority and prosecuting authority interactions in administering the mutual legal assistance process. This mechanism in many jurisdictions does not always work well. The issue for prosecutors is getting efficient and timely replies that answer the requests made as completely as possible in the circumstances. The central authority wants to ensure sovereignty and foreign policy are not infringed or have implications in any given request. These different priorities can cause delay and create cumbersome procedures. Prevention of a “silo” mentality developing in the respective authorities is important. The recommendation is to streamline the process.

Recommendation: The prosecuting authority in a jurisdiction should be designated the central authority for receiving any MLA requests. This would naturally include a duty to inform and supply a copy to the foreign affairs or domestic affairs ministry of the jurisdiction of all requests made to the central authority. Alternatively, an officer or office of the central authority can be embedded in the prosecuting authority of a jurisdiction to receive MLA requests. This embedded office, due to more immediate communications and daily interactions will better appreciate the balance between the different priorities enabling a more efficient process.

Recommendation Two

Background: MLA assistance can be improved by arranging a division of labour between the authority and with the prosecuting authority. The concomitant of this is an enhancing of the role of the central authority. The central authority should not be viewed as a post box where requests are left in the hope they will be delivered in a timely way. There can be better, “value-added” co-operation with the prosecuting authority. Enhancing the role involves the central authority giving itself a clear purpose.

Recommendation: Enhance the role of central authorities by giving them clear goals. Encourage them to fully participate in specialised transnational networks to reciprocate in supplying useful practical contact details of relevant officers or offices. Learn about and use all the tools available to help make accurate requests that comply with a jurisdiction’s requirements. Divide the central authority role between extradition requests and evidence requests in those jurisdictions where the prosecuting authority is not also the central authority. Evidence requests can be assigned to the prosecuting authority with copies to the central authority.
Recommendation Three

Background: The experts were united in calling for early engagement. That is early contact with counterparts in the central authorities, prosecuting authorities and law enforcement agencies (LEAs).

An important reason for early engagement with LEAs is to assess if that jurisdiction can help with the subject matter of the request. There may be ways of resolving an evidential issue by informal means, including re-directing the requesting state to open source avenues of evidence and indications that a subject is no longer in the jurisdiction. The preservation of evidence is crucial particularly in relation to digital evidence. Notifications to information technology companies to preserve evidence is essential. Often digital evidence will be automatically discarded after relatively short periods. A warning was sounded that this may in some jurisdictions alert the suspects. Another important reason for early engagement is to ensure the requirements of the jurisdiction are understood at an initial stage, avoiding problems and delays later in the process. Early contact may allow the request to be directed to specific officers that have already been assigned to assist or have previous knowledge of the request. Once more this may lead to informal means of eliciting substantially the same evidence. These methods of informal assistance often have the advantage of timeliness. Early engagement may be assisted by use of international agreements that allow for assistance. An example is the UNCTOC.

Recommendation: Encourage early engagement by requesting jurisdictions with counterpart central authorities, prosecuting authorities and LEAs. This will be assisted with a clearly stated policy within a jurisdiction recognising the feasibility and utility of such contact and any drawbacks. One way of achieving this is negotiating protocols for Police to Police assistance or agreements on such assistance made bilaterally or multilaterally.

MLA lab members’ specific thoughts

Rosa Ann Martinez, Spain, was supportive of avoiding silo mentalities. This was best avoided by ensuring the central authority was the Prosecution entity. This streamlined procedures. The Foreign Affairs ministry should of course be kept fully informed. The single most important aspect is to have and keep in practical effect a single authority handling all mutual assistance.

Dimosthenis Chrysikos, UNODC, advocated prosecutors joining specialised networks and the UNODC also has many contact details. These can be used to find updated details of central authorities. Any central authority should not be a mere postal service and can add to its services. The UNODC is preparing and will soon have available a manual for expeditious mutual legal assistance. When available this will be one of the tools to be utilised.

Yuval Kaplinsky, Israel, posed the question, “what are we, a central authority or a centralistic authority?” Meaning the central authority can facilitate MLA by adopting a mindset that allows MLA through means other than the formal. One that does not demand a rigid approach only requiring the authority to be used at all times, in all ways. He described how informal approaches to counterparts can be used to obtain efficient results. This requires full reciprocity. There must be trust that in future reciprocity will be honoured.
Nicola Yang, England & Wales, highlighted the need for early communication. This facilitated knowledge of requirements of the receiving jurisdiction and the details of those likely to be handling the request. The Police to Police channel is highly useful and this may lead to open source research that gives the evidence required without a formal request. Specialised networks should be utilised. Liaison offices in other countries are useful.

Kamel Buirguis, Egypt, emphasised that adequate evidence is needed for a successful request. Digital evidence collection is not easy when there are different levels of development between the countries involved. There are great differences in demands of evidence between countries. The unified mechanism of the UNODC is a positive area of development. In digital evidence China and Egypt have an MOU and it is working well. Meetings with counterparts create favourable environments for better collaboration. Egypt has domestic laws and requirements that must not be overlooked.

Thomas Burrows, USA, recommended the UNTOC to prosecutors as particularly useful when there is no MLAT with a particular country. The US has used it about 600 times in obtaining MLA. There are now 188 states who have signed UNTOC as Japan has joined this year. The other helpful multilateral agreements are UNCAC and the Vienna Convention on illicit traffic in narcotic drugs and psychotropic substances. The UNODC manual should be of great assistance. Future MLA labs should be considered for IAP conferences as they facilitate helpful exchanges between professionals.
PROSECUTING CRIME IN A DIGITAL AGE

Second Plenary Session “Prosecuting Crimes in a Digital Age”
Tuesday 12 September @ 9 AM

Chair and Discussant: Sue Patten, Head of Organized Crime Division, Crown Prosecution Service, England and Wales
Speakers: Daniel Stauffacher, ICT4PEACE, Hri Kumar Nair, Deputy Attorney General, Singapore, Liu Qingfeng, Chairman of iFly Tek, Caroline Nisand, Deputy Director of the Criminal Affairs and Pardons Division, French Ministry of Justice,

By Xenia Milne, Public Prosecutor, Office of Public Prosecutor, Canton of Zurich, Switzerland. Rapporteur.

Prosecution in a digital age brings new challenges for prosecutors. The number of offences using new technology and the level of their sophistication has increased drastically in the last years, forcing us to ask questions such as where we can find good practices in meeting these challenges and how we can share them? How can we keep up with evolving technology as investigators and prosecutors? What skills and expertise do prosecutors of today need to be effective and how can we help each other? Is there a sensible dialog with service providers?

Though the underlying crimes are still the same, the old-fashioned detection and investigation methods don't bring the necessary results. On the other hand, if embraced and implemented, new technologies also bring new and creative methods for investigation and prosecution. But it requires that law enforcement and prosecution has access to these techniques and organise their application properly.

The expertise and most of the infrastructure of new technologies lie outside of the government sector and thus almost exclusively outside the realm of prosecution. To effectively counter crime, it is therefore essential that state and private sector agencies enter into a closer dialogue around the use of new technologies. There is no doubt that governments must work to put emphasis on developing and adopting national legislation and guidelines and must work together to develop new concepts of international law applicable to cyber space. But no legislation can be developed in vacuum. A dialogue with the private sector and civil society must take place on a regular basis in order to develop workable solutions. Periodic discussions and meetings on international and regional level can foster development of mutual understanding between the private sector and the governments in order to work out regulations and guidelines that reflect viewpoints of stakeholders both with technical expertise and with the legislative power.

On the more practical level, prosecutors and investigators must have access to new technologies and be properly educated and trained. Some countries already incorporate new technologies in the process of investigation and prosecution, such as the use of open source, of electronic devices
to process large volumes of data, use of artificial intelligence programmes and devices for face and voice recognition, automatic translation of voice to text and automatic translation in other languages. However, prosecution services in most countries could benefit from a much better access and a significantly higher capacity.

One of the very urgent challenges pertains to the development of criminal organisations into ecosystems in which criminal organisations work seamlessly across borders leaving no ‘fingerprints’ through encrypted communication and the use of the deep – or dark – spaces of the internet. It appears to be pertinent to countering this development that knowledge in this area is consolidated, that necessary legislations are enacted and harmonized across states and that practical solutions that allow investigation and prosecution to solve cases efficiently across borders, often under time pressure (e.g. in the event of a terrorist attack) are made possible.

**Special Meeting for Heads of Prosecution Services: Practicing Law in a Digital Age**

*Tuesday 12 September @ 11:30 AM*

**Facilitator:** Claire Loftus, Director of Public Prosecutions, Ireland; **Speakers:** Jaap Bosman, Founding Partner, TGO Consulting; Fan Qingfeng, Senior Vice President of ZTE;

By Magdalena A. Boynton, Associate Director, Office of International Affairs, U.S. Department of Justice, USA. Rapporteur.

This special presentation for heads of prosecution services focused on the next frontier for the legal profession: how to harmonize the unique demands of the law with the efficiencies and advantages of the digital world. Our two speakers endeavoured to answer the question through the lens of their differing professional experience and perspectives.

Jaap Bosman, the founding father of TCO, a technology firm that provides digital services to law firms, outlined the future of the law in the digital era, touting the benefits of modern advances while issuing a caveat emptor warning: while tomorrow’s robots and tech improvements might relieve us of the more tedious aspects of legal practice, how much can or should we rely on digitalization? Will the modern era render lawyers and other professionals obsolete? Bosman’s answer was sobering. He hypothesized that technological advances might indeed render certain professions a thing of the past—paralegals and court clerks, to name a few—given the existence of software that yields greater efficiencies in the processing and organizing of information. Bosman’s sometime dark analysis nevertheless offered a ray of hope: the future will always have a place and need for professionals, such as prosecutors and judges, for whom the exercise of judgment, tact, discretion, and social discernment are uniquely human attributes. Bosman’s key message was simply that while computers can ease our administrative burdens, there are no magic fixes, particularly for prosecutors, who must rely on the irreplaceably personal traits of trust and judgment in order to do their jobs.

Offering a more positive view of technology, particularly with respect to AI, ZTE Vice President Fan Quinfeng’s look into the future is promising. Delivering his message with the clarity and focus of a left-brained techie, Quinfeng believes the digital era will greatly favour those in the business of
criminal prosecution. Highlighting the increasing reach of data storage capabilities—the zettabyte has now arrived—Quinfeng envisions a day when improved connectivity, shared judicial collaboration, and data mining will allow prosecutors and law enforcement to better serve society. Quite appealing was the utopic prospect of prosecuting authorities sharing and building unified platforms that could fully manage cases and resources, while also communicating with each other in the same digital language. For Quinfeng, AI, and all it entails, paints a rosier view of the future, one where massive data collection—done responsibly—improves social and economic governance and leads to increased fairness and justice. Prosecutors and law enforcement, in particular, will be able to capitalize on “Big Data” for improved crime analysis, more accurate crime trend predictions, standardization of recurring investigative techniques, and global accessibility to key law enforcement data bases. In Quinfeng’s world, tomorrow is our friend.

Fellow prosecutors: our challenge, as the guardians of the public trust, is to find the approach that will keep the scales of justice in balance.

**Cybercrime (GPEN workshop)**  
*Monday 11 September @ 2:30 PM*

*Facilitator:* Han Moraal, Secretary-General of IAP and National Member for the Netherlands, Eurojust.  
*Speakers:* Cai Rüffer, Public Prosecutor, Centre for Combating Cybercrime, Attorney General’s Office of the State of Hessen, Germany; Hedda Litwin, National Association of Attorneys General, USA; Dimosthenis Chrysikos, UN Officer, UNODC.

*By Charles Wilcox Ofori, State Attorney, Ministry of Justice/Economic and Organised Crimes Office, Ghana, Rapporteur.*

The first presentation was delivered by Cai Rüffer on the topic, “Prosecution of E-crimes involving Cryptocurrency”. In his presentation, Rüffer highlighted key areas in cybercrime such as concealment of identities, obfuscating of personalities, encryption of data, networks of criminal activities and others. This criminal network uses a particular payment process in transacting business because those payment systems are unregulated and obfuscated. Examples of such payment systems are bitcoin, block chain and cryptocurrency. Criminals use these payment systems because there are no trace or regulation to check their operations for example, non-use of banks or regulated financial institutions, no centralized payment system, no tracking in these transactions. These challenges allow criminals in cybercrime activities easy avenues to dissipate their proceeds of crime and evade law enforcement agencies hence making same difficult to detect and control. He quizzed participants that more study should be conducted into cryptocurrency activities whether it is appropriate for law enforcement agencies to consider whether or not states should regulate cryptocurrency.

The second presentation was delivered by Hedda Litwin on the topic, “Digital Evidence Challenges for Prosecutors”. In her presentation, Litwin highlighted some of the challenges prosecutors encounter...
during preservation and admissibility of digital evidence such as constitutional rule against self-incrimination, authenticity of digital evidence, integrity of evidence, duration of preservation of evidence, proper custody of evidence, seizure and warrant for electronic devices and stored data that are encrypted. She concluded that the best way for prosecutors to overcome these challenges is to comply with statutory requirements for digital evidence and maintain integrity and authenticity of electronic evidence at all times. She also admonished prosecutors on essence of time in electronic evidence in procuring evidence and balancing the right of the accused and the state.

The last presentation was delivered by Dimosthenis Chrysikos on the topic, “Crime Prevention and Criminal Justice Response to Cybercrime, The UNODC Perspective”. He introduced participants to the draft document on cybercrime of the United Nations on Drugs and Crime. He highlighted key concepts of the draft cybercrime study of the UNODC for example, international co-operation (procedural and enforcement) provisions for electronic evidence, investigating powers and measures, jurisdictional issues, mutual legal assistance, binding multilateral instruments – capacity building, data collection, centralized cybercrime units and expediting MLA processes involving electronic evidence. He encouraged participants to use the draft study for informal processes and procedures to obtain electronic evidence.

Participants showed much interest in these presentations and asked very teething questions, for example, how do we (prosecution offices) prepare ourselves for the next five years from now in the fight against cybercrime? What biggest challenge do we foresee from now? Some of the speakers answered that technical training and building capacity is one of the ways to fight cybercrime. Han Moraal, IAP Secretary-General, observed that new challenges arising out of cybercrime activities need more innovative responses from law enforcement agencies to control them.

Can prosecutors be replaced by artificial intelligence?

Tuesday 12 September @ 2:30 PM

[Workshop] Chair: Pavel Zeman, Supreme Public Prosecutor of the Czech Republic; Speakers: Christophe Regnard, Judge, International Association of Judges; Wang Shijin, President of IFly Tek Beijing Research, Vice President of IFly Tek AI Research.

By David Bisamunyu, Senior State Attorney, Directorate of Public Prosecutions, Uganda. Rapporteur.

The Chair, Mr. Pavel Zeman welcomed the participants to the Workshop and introduced the two speakers, Judge Christophe Regnard and Dr. Wang Shijin.

The first speaker, Judge Regnard, observed that Artificial Intelligence (AI) for lawyers can be used in drafting documents. He was also of the view that AI could possibly replace prosecutors but cannot replace Judges. He stated that with the help of legal practitioners, AI can improve the value of their work. Another use of AI is that it can avoid errors that can occur in human thinking. However, innovations in logarithms like sense, tone, and thinking are not to be overtaken by AI. He noted that AI also improves conviction rates. Overall human lawyers and Judges are still the core of the judicial system while AI can be used in petty cases like theft but cannot replace Judges and prosecutors for other serious crimes like murder. Judge Regnard also emphasized the benefit of the court to see the
accused physically. He concluded that AI cannot completely replace the work of Judges and prosecutors because they have a human face and use conviction in our heart to come to a ruling that is not mechanical or rigid. Machines cannot replace prosecutors, although they are needed, they should continue to evolve and not go to the dark era described by George Orwell in 1984.

Dr. Shijin in his remarks described the work of IFly Tek and its contribution to judicial work. He also talked about the application of AI as a foundation of prosecutor’s work which began in 1991 to 2001 in China, and noted that with cognitive intelligence machines can analyze and make decisions like human beings. An example was given about how self-learning and cognition were being used to admit students to the university based on their essays analyzed through AI. For judicial work, he stated that AI can reduce the error rate by combining audio and written text, AI can also be used to go through the voluminous paperwork that lawyers normally have. AI can also give some suggestions on punishments so many similar cases can be handled and the accuracy rate can reach 90%. He also noted that with big data and AI they can provide a lot of assistance to prosecution work and that change should be embraced by all. Dr. Shijin concluded that AI cannot replace human beings, however machines give suggestions to the prosecutors or Judges. This makes them more efficient and with more time to spend on more complicated cases and not the easier ones.

Outcomes: The session was opened up for discussion and after a very lively and vibrant interaction where it was generally agreed that prosecutors and Judges cannot be replaced by AI, but it can only help them. Both speakers were of the view that AI cannot take over completely but can be used to complement Prosecutor’s work. Some of the areas where AI can be used include handling minor cases, drafting of documents, going through voluminous information collections and also making suggestions on punishments for similar cases. It was highlighted that the bulk of the work like writing judgments and actual prosecution of cases can only be accomplished by judges and prosecutors themselves because they have the human face of dispensing justice.

Overall both the speakers and the discussion concurred that as of now AI cannot completely replace prosecutors but assist them as shown.

IAP/CTED/UNODC project on securing Digital Evidence – special plenary session

Monday 11 September @ 10.10 AM

Presentations by David Scharia, Chief of Branch, CTED, United Nations Security Council & Gerhard Jarosch, President of IAP.

The IAP President and the CTED Chief of Branch presented the UN CTED, UNODC and IAP partnership, which aims to improve the practical efficiency of judicial cooperation and specifically to increase the efficiency of requesting and gathering digital evidence in counter-terrorism and other related cases. The project has received 1 million USD from the United States Department of State, allowing the first and crucial phase of the project to go ahead, including:

- Creation of a database of central national authorities (CNA) for terrorist cases
- Development of a global network and database of specialist counter-terrorism prosecutors
- Develop a practical guide on requesting and gathering electronic evidence
- Carry out four regional capacity building workshops
- Develop e-learning material

The implementation will commence ultimo 2017.

**Counter-Terrorism Prosecutors Network (CTPN) – digital evidence**

**Tuesday 12 September @ 11:30 AM**

**Facilitator:** Daniel Stauffacher, ICT4PEACE; David Scharia, Chief of Branch, CTED, United Nations Security Council; Daniel Stauffacher, ICT4PEACE; Wang Lei, Senior legal counsel, Weibo Company; Michèle Coninsx, President of Eurojust.

_By Allen Mumia, Directorate of Public Prosecutions, Prosecution Counsel, Kenya. Rapporteur._

The Special Interest Group Meeting for the Counter-Terrorism Prosecutors Network (IAP CTPN) was arranged in collaboration with ICT4Peace and UN CTED, bringing the dialogue and interface between state agencies, private internet companies and international organisations centre stage in the efforts to investigate and prosecute terrorism. The session was attended by at least 80 prosecutors drawn from diverse jurisdictions around the world.

David Scharia the Chief of Branch UN CTED, informed the Participants that the IAP CTPN has its roots in the Annual Conference of the IAP in Zurich, 2015. The initiative was taken to allow for prosecutors to create transnational communities to allow the exchange of good practices and to support more efficient mutual legal assistance taking through formal channels. Also, the aim was to reach out and partner with communication service providers, internet and technology companies with a view of stemming the gap of technological challenges that hinder successful investigations and prosecutions. The need for continued dialogue with such organizations could not be overemphasized.

The membership penetration of the CTPN was also alluded to by Rasmus Wandall, the General Counsel to the IAP where he indicated that the network already had managed to build a network of contact points including more than 30% of the organizational members of the IAP. Funding to the tune of USD 1 Million is secured for purposes of the Digital evidence project in a partnership between the IAP, UNCTED and the UNODC. The digital evidence project aims to capacity build the network of central authorities as well as the supporting professional networks of prosecutors and law enforcement as well as to provide better and more easily accessible information on how to carry out MLA in terrorism cases and how to secure digital evidence. Prosecution authorities were encouraged to tap into the said project for capacity building. The golden thread in both Rasmus H. Wandall, the IAP General Counsel’s presentation and that of Michèle Coninsx, President Eurojust, was that states need to get organized in a “global way” and expeditiously so, as it was impossible to isolate regions from others in the fight against terrorism. This was attributed to the alarming rise in the use of the internet to recruit, finance, spread propaganda, plan and execute attacks.
The above was alluded to passionately by Dr. Daniel Stanffucher, ICT4Peace, who emphasized the need for a dialogue at regional levels and the need to have deliberate and structured conversations with technology companies on self-regulation.

Mr. Wang Lei, Senior Legal Counsel, Weibo Company weighed in on the issue with practical ways as to how a tech giant in China was dealing with cyber security issues. The participants were informed that the Chinese Cyber Security Law was implemented on June 1, 2017 to deal with the concealed nature of cybercrimes. The Weibo Community Convention for instance, deals with use of technology that may be deemed to endanger national security, and divulge state secrets. They also interestingly have an online reporting and claiming mechanism. Weibo also provides effective guidance by setting Weibo topics thus directing online discussions. This was particularly encouraging noting that the company is one of the most popular social media sites in China with a 30% penetration in China, similar to Twitter in the United States.

In light of the foregoing deliberations, it was agreed in plenary as follows:

- Due to the broad sense of terror related cases, CTPN should not only be limited to terrorism only but may also focus on terrorist financing, cyber related offences, radicalization and de-radicalization programmes and intelligence sharing.
- The need to include as many practicing prosecutors in the field of terrorism globally to the IAP CTPN.
- The need to share precedents to learn from regional and international best practice and in equal measure, identify areas that need capacity building (Common website for such precedent sharing)
- Need to develop mutual trust among states as this has proved to be effective as opposed to the traditional MLA rigours, borrowing from the experience of the EU in the past 10 years.
- Need for a common approach in handling terror related cases.
- Need to sort out issues of jurisdiction, proof required in cases, admissibility of evidence and uniformity in as far as is possible within and amongst our laws.
PROSECUTING IN THE BIG CITIES

Third Plenary Session “Prosecuting in the Big Cities”
Wednesday 13 September @ 9:00 AM

(Plenary) Chair and Discussant: Solveig Wollstad, Chief Prosecutor and National Member of Sweden to Eurojust. Speakers: Manuel Pinheiro Freitas, IAP Vice President, Director General, Superior Law School of the Public Prosecution Brazil, Jing Dali, Chief Prosecutor of People’s Procuratorate of Beijing Municipality, P.R. of China, Shai Nitzan, State Attorney of the State of Israel, Cheol-Kyu Hwang, IAP Vice-President, Chief Prosecutor, Daegu High Prosecutors’ Office, South Korea.


Presenting the first paper, Mr. Jing Dali, Chief Prosecutor of People’s Procuratorate of Beijing Municipality described innovative developments in megacities. He highlighted the functions of the procuratorial authority in Beijing and stated their functions and dedication to safeguarding, security and social stability of cities to enable them achieve economic globalisation in a mega city such as Beijing to make it more liveable. He emphasized security and stability as a pre-condition of higher economic stability. To achieve this, he described the various departments the procuratorial agency in Beijing focuses as: National security and public security, financial crime department, intellectual property cases, department for internet and telecommunication crimes.

According to him, the establishment of the various departments is geared towards promoting social risk prevention and control, guarantee economic and social development, facilitate society governance innovation, resolve the contradictions and disputes at the front end of litigation, implement the responsibility of publicity of law, provide legal assurance to its citizens and promote perfection and consummation of compound governance system of megacities. He cited examples of the types of disputes handled by the procuratorate and mentioned the high frequency of crime and terrorism as a major problem just as it is for most mega cities.

Mr. Jing Dali highlighted the different modes adopted in settling disputes part of which includes scientifically deployment and the allocation of prosecution work on the basis of the strategic positioning using overall layout of Beijing to improve prosecution. He noted their preserve for rule of law, support for innovation and the need to create an enabling environment for the scientific talent. He mentioned that procuratorial technology and information centre, forensics centre, case audio and video files management and dispatch centre, integrated system platform with real-time supervision are major scientific measures adopted bearing in mind the foundational preserve for rule of law. In conclusion, he emphasised the need to utilize exchange and collaboration to strengthen all our countries and promote social progress.
Presenting the second paper, Mr. Shai Nitzan, the Israel State Attorney, discussed the challenges of the Israeli prosecution in a religiously polarized society through case studies from Jerusalem. Mr. Nitzan gave an insight into the Israeli prosecution service using examples to describe the various challenges faced with the communities given the diversity and contrasts in Jerusalem. It was noted that 35% of Jewish population viewed their religious leaders with sovereignty. Citing the example of some of the cases handled by the prosecution service, the Rabbi Berland case filed in Jerusalem involving sexual acts was exposed and in spite of extradition processing, the suspect was still widely supported by the communities.

The second example cited was that of Shalim Mother case involving a group of Jewish women who wore multiple layered clothes and refused to speak to anyone including their own children. He described the pressure exerted by the community on the children to prevent them from testifying. Notwithstanding, he stated that she was sentenced and convicted to 4 years imprisonment. Likewise, he described the Schlissel case involving stabbing during the Gay Parade in 2005. He stated that notwithstanding their lack of cooperation upon arrest, they were convicted and sentenced for premeditated murder and assault. Lastly, he described the case of the Shabat and explained that during this period, you are to refrain from working. He highlighted the resistance from those who do not share the belief underlying the Shabat, a resistance which sometimes leads to violent demonstrations causing both chaos and physical injuries. He observed that Jerusalem was a multifaceted city with its own characteristics and challenges in enforcing the law and concluded by suggesting that law enforcement agencies must learn to balance between contradicting values and interests with minimum infringement of people living according to their faith and beliefs.

Presenting the third paper, Mr. Cheol-Kyu Hwang, IAP Vice President, Chief Prosecutor of Daegu High Prosecutors’ Office, Republic of Korea, discussed the experiences of applying Victim-Offender Mediation (VOM) in the Big Cities. Mr. Hwang gave a detailed background on Victim-Offender Mediation programme and described the main aims of the VOM as permanent settlement, restitution and reconciliation and reducing the burden on the justice system. He cited examples of cases where VOM had been used to resolve disputes in Korea some of which includes; resolving parking space conflict, resolving noise complaint in apartment and some other minor disputes. He noted some of the advantages and effects of VOM as a tool to efficient time saving rather than the formal trial process and the recovery of damages where necessary. In conclusion, he reiterated the need to inculcate safeguards which includes: voluntariness of parties and consent to the VOM referral, the avoidance of repeating victimization through reconciliation and the need to treat victims with respect and dignity during the process. He supported the finalisation of the IAP VOM Guidelines for the purpose of adopting same.

Presenting the fourth paper, Mr. Manuel Pinheiro, IAP Vice President, Director General, Superior Law School of the Public Prosecution Brazil, outlined the new challenges arising from the growth of cities and discussed ways in which prosecution can maintain the best possible ways to protect the public interest. Mr. Manuel Pinheiro began by introducing the Brazilian public prosecution “model” and described how Brazil was able to achieve high level of public confidence through social inclusion, social responsibility, environmental protection, notwithstanding its peculiarities. He noted that until the late 90’s, there was no protection to the environment, no consumers’ rights or protection for vulnerable people in Brazil. However, following the Constitutional amendment, Brazil has one of the best consumer protection laws in the world. He ended by advising all prosecution services to ensure effective commitment to social responsibility.
Radicalization and subcultures in the Big Cities

Wednesday 13 September @ 11:40 AM

(Workshop) Chair: Felipe “Mike” Vela, Deputy District Attorney, Los Angeles County District Attorney’s Office, USA. Speakers: André Vandoren, Senior Deputy Prosecutor General, Belgium, André Luiz Nogueira da Cunha, State Public Prosecutor, Sao Paolo State Prosecution Office, Brazil, Mohammad Farid Hamidi, Attorney General, Afghanistan.

By Chen Wenchi, Head Prosecutor, High Prosecutor’s Office, Chinese Taipei. Rapporteur.

The Chairman Felip “Mike” Vela, Deputy District Attorney of USA, pointed out that the crime caused by radicalisation and subcultures was an important issue that must be confronted with. It is generally considered that extremism usually grows in undeveloped areas. Motives such as poverty, illiteracy, lack of economic and social development have facilitated the growth of extremism and the terrorism. However, the recent terrorist activities have proved that terrorists operate all over the world regardless of economic and literacy divergences.

Mohammad Farid Hamidi, the Attorney General of Afghanistan, mentioned the war, violence, local traditions and tribal orientation were the factors resulting in radicalisation and subcultures; the old culture and past history hindered compromise and revival.

Accordingly, André Vandoren, Senior Deputy Prosecutor General of Belgium, posed the question if not the potential consequences of the war in Iraq in 2003 as well as the intervention in Libya in 2011 should be considered? Did these military operations increase the attractiveness of radical ideology to parts of our Muslim population?

André Luiz Nogueira da Cunha, State Public Prosecutor of Brazil, argued that when people lack a sense of belonging to the city, are not satisfied with public services (such as safe drinking water, adequate power supply...), do not trust the Government, they may stimulate radicalisation from subcultures which make people difficult to integrate into the cities.

In addition, it is worth noting the media’s role in spreading radicalism and extremism. Nowadays, people can publish to websites and social media, access to large amounts of information easily and quickly, communicate and build relationships with other people as well as spread easily the destructive mentality and mindset.

Nevertheless, the growing number of communication service providers, such as Whatsapp, Facebook, Twitter, and Instagram, makes criminal investigation more difficult. Furthermore, how to access encrypted information and the possibilities and procedures of imposing obligations on internet providers to make information available to law enforcement agencies also represents a significant challenge.

Regarding the countermeasures to terrorism, André Vandoren emphasized the need for better exchange of information and coordination of activities on all levels. He also referred to the legislation of control measures, the strengthening of protection services as well as a specialized follow-up scheme for radicalization and recruitment in prisons.
‘Social protection’ is one of the prosecutorial functions in Brazil. It ensures the protection of individual rights, the diffuse rights, the collective rights and the homogeneous rights guaranteed in the Constitution. The cases regarding environment, urban development, public and social property, physically disabled people are always in relation to the protection of public interests and prevention of uncontrolled urban growth. In Brazil, prosecutors may turn to faster out of court solutions that respond to people’s need for expediency. If not possible, the prosecutor may file a civil action, a motion of judicial injunction, a writ of prevention or a provisional remedy order.

Mohammad Farid Hamidi, the Attorney General of Afghanistan, suggested to enhance security, law enforcement and crime reduction through education and correction schemes. He also advocated big cultural and human rights awareness programs; reminded the government to pay close attention to the requirements for urban infrastructure and facilities to meet people’s needs.

The reports and discussion of this workshop led us to review the threat caused by radicalism or subcultures that are similar but with different local political, historical, economic, and cultural elements from a comparative perspective and to learn from the experience of other countries. These are indeed issues that need to be dealt with transnationally and by resorting to systematic international measures.
PUBLIC INTEREST, INTEGRITY, INDEPENDENCE AND ACCOUNTABILITY

Fourth Plenary Session: PUBLIC INTEREST, INTEGRITY AND ANTI-CORRUPTION
Thursday 14 September @ 9:00 AM

Chair and Discussant: Paula Llewellyn Director of Public Prosecutions, Jamaica. Speakers: Jean Fils Kleber Ntamack, Prosecutor General, Court of Appeal of Yaoundé, Cameroon, José Albuquerque, Prosecutor, Sindicato dos Magistrados do Ministério Público, Portugal, Júlio Marcelo de Oliveira, Public Prosecutor in Brazil’s Court of Accounts.

By Jeanette Manning, National Association of Attorney Generals, USA. Rapporteur.

The Public Interest, Integrity and Anti-Corruption plenary session focused on the important role prosecutors must take as the consummate stewards in promoting public integrity and representing the public in the most dignified manner. Messrs. Ntamack, Albuquerque, and Marcelo de Oliveira, from Cameroon, Portugal, and Brazil, respectively, shared their personal experiences and opinion regarding why prosecutors must be beacons of justice and resist the pressure to make decisions based upon political whims or engage in corrupt and immoral behaviours. Director of Public Prosecutions Paula Llewellyn from Jamaica served as the chair and discussant of the robust panel. This summary briefly highlights the particular areas each presenter covered and items for future commentary aimed at furthering the goals of this plenary session. Each presenters’ full remarks are available on the International Association of Prosecutors’ website.

Prosecutor General Jean Fils Kleber Ntamack primarily focused his remarks on noting that prosecutors must always serve the public interest first and can perform their jobs effectively when they are equipped with essential technological tools, adhere to the most ethical practices and with utmost probity and independence, and neglect to succumb to pressures from external environments. Sindicato dos Magistrados do Ministério Público José Albuquerque discussed the social responsibilities prosecutors have to be models of service to society, while continually increasing their presence within communities and simultaneously developing partnerships with members of civil society and educational establishments. Public Prosecutor Júlio Marcelo de Oliveira shared an account and ancillary challenges that arose to combat fiscal fraud involving the prosecution against former President Dilma Rousseff.

Each plenary speaker shared his opinion on various principles and aspirational goals that all prosecutors should seek to achieve, given their specific and special mandates to serve the public and seek justice objectively. Although their presentations were refreshing regarding the very important role of prosecutors, a sincere conversation is required concerning why these objectives tend to be unattainable globally for many prosecutors after one dissects the actual circumstances
in which they operate as government officials. Instead, the political, cultural, social, and economic environments in many parts of the world often render these principles as lofty and unrealistic aspirations.

Globally, the world is becoming more interconnected and prosecutors are able to work collaboratively in a more effective manner—thanks, in part, to technological advances and improved communication. However, despite this progress, many prosecutors continually face temptation and pressures daily to engage in activities that go against the public interest. Therefore, simply asking or noting that prosecutors should resist impropriety without adequate measures in place to reduce or eliminate these practices accomplishes little. Without question, prosecutors must have strong office leadership and work hard to maintain justice and work to benefit the public, and they individually must possess a strong moral compass and take personal accountability and responsibility. However, a candid discussion and viable best practices must be offered on ways to reduce bad acts among prosecutors when they are working in dangerous and, often, very challenging atmospheres.

Succumbing to temptation is never an acceptable option but may be more understandable, for instance, where: prosecutors’ lives are literally in danger with threats of bodily harm or actual violence to them or their peers if they fail to act in a corrupt manner; many receive extremely low wages where they cannot survive while living a modest lifestyle; they work in countries where little can be realized because the general custom and practice lends itself to much of society participating in corrupt activities; they work in countries with very little resources and may be suffering from extensive conflict or social discord and upheaval, corrupt governmental and societal systems, and politically unstable environments; or their leadership does not promote an honest agenda and impunity thrives at every level.

Recommendations that address the root causes and offer solutions on the above-described sampling of problems are not easy feats, but further discussion on these fronts is critically important in an international space when asking how to ensure that prosecutors operate as strong public stewards, abstain from corrupt practices, and work diligently to carry out justice. The international community must come together and offer assistance as stewards of justice to help prosecutors struggling to uphold the scales of justice by providing legal, social, academic, or even financial assistance, as appropriate and necessary, and through partnerships.

Keynote and Discussion: Prosecution in the Public Interest
Wednesday 13 September @ 2.10 PM

Facilitator: André Marty, Head of External Relations, Office of the Attorney General of Switzerland.
Speakers: Tor-Aksel Busch, Director of Public Prosecutions, Norway & Alison Saunders, Director of Public Prosecutions, England and Wales
Guided by the facilitator, the speakers shared understandings of what public prosecution in the public interest means, the limits it imposes on the work of prosecution and how working in the interest of the public requires a responsiveness to societal developments as well as to the complexities of diverse populations. Examples of difficult cases were discussed. A crucial distinction was made between the role of prosecutors working on criminal cases versus the role in policy making. Practicing prosecution should not be an extension of policy making but of law. At the same time, the prosecution service has a unique position to observe practical developments and workings in the justice system and an equal privilege to inform policy-makers and legislators of these developments and practices. Prosecution services has a real ability to shape and influence societal attitudes which impact on public interest.

Prosecution Associations – Accountability of Prosecution and Associations
Tuesday 12 September @ 11:30 AM

Facilitators: Marina Matic Boskovic, Justice Reform Adviser, Association of Public Prosecutors and Deputy Public Prosecutors of Serbia, Roel Dona, Senior Advocate General, Vice President of Dutch Association for the Judiciary, the Netherlands; Elivera du Plooy, Chairperson of Society of State Advocates of South Africa/ Senior State Advocate, DPP Johannesburg, South Africa; By António Manuel Ferreira Ventinhas, Sindicato dos Magistrados do Ministério Público, Portugal, and José Paulo Ribeiro Albuquerque, Sindicato dos Magistrados do Ministério Público, Portugal. Rapporteurs.

The Global Forum for Prosecution Associations Special Interest Group Meeting targeted two main topics: First, the importance of debate and information exchanging regarding Prosecution Associations. Second, the impact of the IAP Global Forum of Associations encouraging that debate.

Regarding the importance of information exchange, Marina Matic presented the comparative analysis and outcome of the IAP survey on associations. Fifteen associations contributed to that survey regarding issues such as organizational structure, legal models and statutes, membership, tasks and services, responsibilities and goals, and funding. Although the different national contexts and the different legal systems explains why there is no single model of prosecution associations, the survey did also reveal that the main goals of prosecution associations are similar in defending the independence of the prosecution and judiciary, the strengthening of integrity and responsibility of prosecutors, the protection of rights and interests of prosecutors, the participation on legal and
judicial reforms, but also the promotion of professional training, among other collective concerns and benefits.

Having a forum of associations under the umbrella of IAP is not only an opportunity to exchange experiences, but also a privileged floor to deliberate on main issues, like the role of associations in prosecutors’ accountability, prosecutors and media, prosecutors’ social responsibility and public confidence in justice, prosecutors’ integrity and professional standards, resistance to undue influence, comprehensive independence, among other things.

The debate between the participants and facilitators on both topics was both practical and fruitful. Shared concerns emphasized the main outcomes of the meeting, which were:

- Besides the need to implement a network of associations and contact points, also to help in the emergence of new associations, it could be useful to have a database of statutes in the IAP website for those colleagues willing to constitute its national association. That database could be developed as a website on the IAP domain and for that Kate Matthews from Ontario Crown Attorneys Association volunteered to oversee and support the website.
- Regarding the proper representation of associations in IAP, it was found necessary to repeat the call for further developing the Special Interest Group into an actual IAP network, thus also supporting the expansion of the Global Forum for Associations.
- Concerning the collection of information, it was considered appropriate to deepen and continue with the worldwide survey on associations.

IAP Professional Standards: How to make the IAP Standards work?
Monday 11 September @ 2:30 PM

(Workshop) Facilitators: Gerhard Jarosch, President of IAP & Rasmus H. Wandall, General Counsel of IAP. Speakers: Shaun K. Abrahams, National Director of Public Prosecutions, National Prosecuting Authority of South Africa, Runar Torgersen, Senior Public Prosecutor, Office of the Director of Public Prosecutions, Norway, Sabin Ouellet, Chief Prosecutor, Department of External Affairs, Security and Developments, Office of the Director of Public Prosecutions, Quebec, Canada, Nicholas Cowdery, Adjunct Professor of Law; former IAP President; former DPP of NSW, Australia, Claire Loftus, Director of Public Prosecutions, Ireland, Martin Schönteich, Senior Managing Legal Officer; Criminal Justice Reform, Open Society Justice Initiative, USA.

By Barra McGrory, Director of Public Prosecutions, Northern Ireland. Rapporteur.

In opening the discussion, the session’s aim was laid out as exploring methods of ‘hiring and firing’ prosecutors and to discuss ways of supporting the international standards pertaining to this matter. Martin Schönteich presented a thoughtful paper setting out a variety of prosecutorial models in which he identified three interlocking axes: common law systems where the prosecution is typically a part of the executive and civil law systems in which some are part of the executive and in others part of the judiciary; systems which are either discretionary (typically common law) or mandatory (civil law systems can be either) and systems that operate either hierarchically or with prosecutors who are independent of each other. He also outlined the different career structures for prosecutors
some of whom began to specialise in this field as early as law school while others began soon after or others who learned on the job. Martin spoke of the need to distinguish between de jure and de facto independence and suggested that those systems with a higher degree of de jure independence were associated with a higher degree of perceived corruption than strong de facto independence traditions.

Nicholas Cowdery introduced the participants to the international standards of independence and in particular made reference to the UN guidelines “the Status and Role of Prosecutors” (1990) that stressed the need to avoid discrimination in making appointments and to the 1999 IAP Standards expressly mentioning independence. Further progress was made in 2005 with the UN Convention against Corruption by which each state undertook to take measures to prevent corruption in the judiciary and this was equally applicable to prosecutors.

Marco Voller presented the case of South Africa and indicated that recognition of independence was a key challenge for the prosecution service there. He indicated that the budget was controlled by the Minister of Justice and that a key goal was to achieve budgetary independence from the DOJ.

Runar Torgersen presented the case of Norway and referred to the Norwegian 1814 constitution that permitted the King to remove or direct the Prosecutor General, although no one had ever been sacked. Independence was desirable to avoid arbitrary decision making and to explain decisions but he recognised that politicians would have to want to bring about independence.

Sabin Outlet told the meeting of the culture of independence brought about by the introduction of the DPP model ten years ago in Canada and that independence was recognised by the Supreme Court. He spoke of the challenges with the media and in communicating directly with the public.

Nicholas Cowdery presented his view, based on sixteen years as DPP that he felt the essence of accountability was that every one of the community is a client of the prosecutor as prosecutions are done in their name. While he never had direct political influence, there were responses with stories in the media and so forth. Resources were always a challenge and with good leadership others would follow. Good practice would filter down.

Claire Loftus, presented the case of Ireland and said they had a clear statute which set out the appointments process and removal process and made it an offence for anyone to communicate with them other than a victim or victim’s representative. It was regarded as one of the most independent systems in the world. No other authority oversaw their work but they were not without challenges as sometimes misunderstandings arose. Not all politicians understood the rule against contact. Her predecessors had clarified the situation so there was now a better understanding amongst politicians.

Barra McGrory informed about Northern Ireland and the provisions made for an independent prosecution system in the aftermath of the Belfast Agreement in 1998. Prior to that the DPP was subject to direction from England. He also advised the meeting of the provision allowing for impeachment of the DPP by the Attorney General of Northern Ireland, an office also created following the Agreement.
The discussion moved to the topic of appointment procedures. Of the many interesting interventions, we among others learned about the Irish statutory process involving the Chief Justice and the chairs of the Bar Council and Law Society and that her term was now limited to ten years and was non-renewable. Nicholas Cowdery considered that at a minimum there should be a public advertisement and competitive selection. The composition of bodies to prepare and decide on appointments was discussed. As to time limits it was informed that in Quebec there is a non-renewable seven-year term and that the DPP was chosen by a board making three recommendations to the Minister/Executive. In South Africa, there is a similar system to Ireland but the appointment must be ratified by parliament. In New South Wales, there is not a fixed appointments body but the board is drawn from various interest groups and the appointment must be approved by the Independent Commission against Corruption and a parliamentary committee.

In the concluding part, the co-chair, Rasmus Wandall, based on the many presentations, raised the possibility of the IAP develop best practice collections or actual guidelines or minimum standards. The viability of developing standards with a global reach was discussed. Among others, the case of political appointments and elections in the USA was mentioned as an unavoidable example of elements of politics in prosecution. James Hamilton considered that while challenging, it was indeed possible. Standards would have to be non-prescriptive.

Prosecutors, Integrity and Legality
Tuesday 12 September @ 2:30 PM

Chair: Lavly Perling, Prosecutor General, Estonia; Speakers: Catherina Anna Nooy, Prosecutor and National Programme Manager of Integrity, Public Prosecution Service, the Netherlands, Richard Ceballos, Deputy District Attorney, Los Angeles District Attorney’s Office, USA, Bola Akinsete, Prosecutor, Lagos State, Nigeria.

By Zhou Yihong, Deputy Public Prosecutor, Attorney General’s Chambers, Singapore. Rapporteur.
Introducing the topic of Integrity and Legality, the first speaker, Catherina Anna Nooy, Prosecutor and National Manager of Integrity, Public Prosecution Service, the Netherlands, observed that often hard rules and laws are insufficient to tackle integrity-related issues, and that more focus is needed in terms of the ‘soft approach’. The starting point is to recognise that a prosecutor can only act with integrity if he can cope with difficult situations and deal with dilemmas properly. Prosecutors may be disinclined to discuss with their superiors about the dilemmas they face. There is a need to open up discussions. Organisations must be made safe enough for prosecutors to open up.

The second speaker, Richard Ceballos, Deputy District Attorney, Los Angeles District Attorney’s office, USA laid down the fundamental premise that police, prosecutors, judges, jury and witnesses are humans, and that humans make mistakes. In the context of prosecutors, mistakes carry serious repercussions. Prosecutors are obligated to prosecute with integrity, and an equal obligation to take action if it is realised that a convict may be innocent. False convictions can happen for a myriad of reasons, including confirmation bias, faulty scientific evidence etc. This strengthens the case for establishing conviction integrity units within prosecutors’ offices. These units review past convictions. If it is realised that a conviction may be wrongful, arrangements are made for the case to be ‘dismissed’ and the convict released from custody.

The units have to operate separately from the appeals units, which defend convictions. The units must work with defence bars (think The Innocence Project), and can also engage other community stakeholders. Mr Ceballos recognises the arguments against establishing such units (e.g. prosecutors essentially ‘acting as the defence’ at the appeals stage). He emphasized that the greater aim is to let the community recognise that prosecutors aim to do justice.

The third speaker, Bola Akinsete, Senior State Counsel, Directorate of Public Prosecutions, Lagos State, Nigeria, shared with the participants that Lagos has about 65 prosecutors serving a 20 million population. The prosecutor highlighted the discretionary powers of the Attorney General in Lagos State and noted the finality of the decision to prosecute where a prima facie case is disclosed. The speaker went further to describe the measures put in place to review the issuance of legal advice and initiating criminal charges based on available evidence. She mentioned that the Legal Advisory Unit and Investigatory Advisory Unit work very closely with the Police to provide and guide investigation and collection of additional evidence where necessary.

During discussions, participants from various jurisdictions (South Africa, Kenya, Chinese Taipei, Australia, Israel, Zambia) were highly interested in the conviction integrity units shared by Mr Ceballos. The audience discussed how wrongful convictions are prevented/dealt with in their respective jurisdictions, and the conversation then shifted to expositions on the exercise of prosecutorial discretion in general.

Mr Ceballos was asked on how the work process of the conviction integrity units relate to the formal appellate procedure – the appellate process is limited by what is on the record, while the units are not. Additionally, reviews by the unit can occur at any point. Mr Ceballos emphasized that another
function of the conviction integrity units is to teach prosecutors and police to avoid pitfalls that may lead to a wrongful convictions.

Public Interest and Prosecutorial Pre-trial Practice
Thursday 14 September @11:30 AM

[Workshop] Facilitators: Muteumbo Nchito, Former Director of Public Prosecutions, National Prosecution Authority, Zambia & Martin Schönteich, Senior Managing Legal Officer: Criminal Justice Reform, Open Society Justice Initiative, USA. Speakers: Martin Schönteich, Senior Managing Legal Officer: Criminal Justice Reform, Open Society Justice Initiative, USA, Yuriy Bielousov, Head of the Expert Center for Human Rights, Ukraine, Gabriel Iván de la Garza Santos, Professor of Constitutional Law, Facultad Libre de Derecho de Monterrey, Mexico, Ayodele Ateenuwa, Professor of Public Law, University of Lagos, Nigeria, Hillary Mukomana, Consultant, Institute for Security Studies, South Africa.

By Timothy Mark Fernandez, Senior Advocate, Office of the Director of Public Prosecutions ACT, Australia. Rapporteur.

Mr Schönteich opened the session by referring to prosecutors as the gatekeepers of the criminal justice system who play a powerful role in every country’s pre-trial process. Whilst police and law enforcement agencies arrest alleged offenders it is the prosecutor who will determine whether to proceed with a prosecution and if so, what charges to proceed with. Prosecutors also have a role in assisting tribunals on issues such as pre-trial detention. However, jurisdictions are often different: Many are adversarial, others are inquisitorial; which raises the issue of whether common characteristics can be identified in prosecutorial pre-trial decision making and behaviour across jurisdictions. That and other issues were addressed by presentations by senior lawyers and academics from Mexico, South Africa and Ukraine.

The first speaker: Professor Ivan de la Garza Santos; Prof. de la Garza Santos is a Mexican lawyer and partner in the firm Fortis Consultores where he serves as a Senior Consultant with expertise in public security, justice and criminal justice reform; he is a professor of Constitutional Law at the Facultad Libre de Derecho de Monterrey and also worked for ten years in the Attorney-General’s Office in the Mexican state of Nuevo Leon. Prof. de la Garza initially provided a broad explanation of significant changes that have occurred in the Mexican criminal justice system and then outlined the main findings of his research which focussed on pre-trial decision making in Yucatan, Mexico.

Basic facts: Mexico is a Presidential Republic with a federal political structure. It has a population of 112,336,000. Prior to 2008 Mexico had a hybrid inquisitorial criminal justice system which functioned within three tiers of government, being federal, state and municipal government. There are 31 states and each city had its own police force (over 200); each state has its own prosecution service with 33 different prosecutorial offices operating within the state and federal tiers of government; each state has its own courts and criminal code and there is a Federal Criminal Code as well. State and Federal criminal procedure is now regulated by a National Code of Criminal Procedures. Drug cartels are perceived as the most important security threat to the nation. In the past few years drug cartels have also engaged in human trafficking, extortion and car theft. In 2016 the homicide rate was 16.97 per hundred thousand inhabitants. Mexico ranks in the “elevated warning” category on the Fragile States Index with a ranking of 88th out of 178 countries. There is a general perception that Mexican
authorities are unable to adequately respond to the challenges posed by organized crime and that the cartels operate with impunity. Since 2008 the Mexican criminal justice system has been transitioning from a hybrid inquisitorial system (the judicial branch did not have an investigative/prosecutorial function) to an adversarial system. Prior to this transition prosecutors had no discretionary function when it came to charging or negotiating pleas. The prosecution simply submitted evidence during the investigative stage without the oversight or supervision of a judicial officer. Confessions were the most important form of evidence. Pre-trial detention was the rule rather than the exception and practically speaking the defendant bore the onus of proof during trial. In the early years of the transition the focus was on the novelty of oral hearings. However, one of the most important challenges related to prosecutorial pre-trial practice.

Prof. de la Garza referred to his research in Yucatan: His focus was on how prosecutors worked with police forces and whether their role and function deterred practices such as arbitrary arrest, and the ill treatment and torture of suspects. He also looked at the criteria used by prosecutors to agitate for pre-trial detention. The expectation was that an adversarial justice system would promote the presumption of innocence and whilst there would be ‘precautionary measures’ pre-trial detention would decrease: The research found that prosecutors endorsed police arrests in almost all cases, regardless of their deficiencies. In many cases prosecutors modified police reports to ensure that the arrest had the appearance of being legal. In relation to pre-trial detention the research found that the imposition of pre-trial detention remained high; that prosecutors sought pre-trial detention to counter the impression that impunity was in any way condoned during the pre-trial process; that prosecutors sought pre-trial detention because they felt obliged to do so under the new rules. The Mexican Constitution establishes the fundamental rights of detainees and the obligation of prosecutors to guarantee those rights: The expectation was that prosecutors would adhere to their obligations. The research found that prosecutors do not guarantee the right to food, health and to communicate with (a support person or legal advisor) upon the arrest and detention of a suspect. There is also no institutional design that allows for the diligent investigation of torture. Furthermore, prosecutors do not give defence attorneys immediate access to a detainee nor timely access to the prosecution’s brief of evidence.

The speaker hypothesised that the mentioned failures may be due to a misinterpretation of the new rules; lack of institutional reorganisation; and that the lack of results in most investigations led prosecutors to ask for more pre-trial detention as a form of compensation.

The second speaker was Ms Hillary Mukomana: Ms Mukomana is a South African lawyer with over 14 years’ experience in the public and private sector. She was admitted as an Attorney of the South African High Court in 2000. Ms Mukomana worked as a State Advocate for the South African National Prosecuting Authority within their asset Forfeiture Unit for 4 years before joining Price Waterhouse Coopers as a management consultant specialising in forensic investigations. In 2010 she was asked to join the City of Johannesburg’s forensic division, overseeing investigations into allegations of corruption, bribery and fraud. Ms Mukomana joined ILogix as a consultant in 2016.

Ms Mukomana’s presentation was entitled ‘Prosecutors’ Routine Pre-Trial Practices: South Africa.’ The methodology used was non-participant observation in 2 Regional Courts in Gauteng, the economic hub of South Africa: and in Johannesburg and Randburg. She also conducted face to face, semi structured interviews with prosecutors.

Basic facts: South Africa is located on the southern tip of Africa. It has a population of 55 million people. The most economically active and populous province is Gauteng where 25% of the
population lives. The country has 11 official languages. Court proceedings are conducted in English yet English is only spoken as a home language by 8% of the population. 2.1 million crimes were reported to police in 2016/17. Armed robbery increased by 31.5% in the past 5 years. 51 people are murdered daily. There are 195,000 Police Service personnel. There were 1.6 million arrests in 2016. The maximum capacity of Correctional Centres is 120,000. In 2015/16 there were 159,336 detainees. 43,000 were not convicted.

Pre-trial practice: A supervising prosecutor (Control Prosecutor) screens each brief of evidence to establish if there is sufficient evidence to support a prosecution. If a certificate of withdrawal is completed by the prosecutor the accused person is released. Prosecutors present the state’s case. Their function is guided by the Criminal Procedure Act and is also dependant to an extent on other players such as the police and the Dept. of Home Affairs. A legal aid attorney is always present to assist unrepresented accused. Magistrates determine whether or not to grant bail and in doing so often engage prosecutors in relation to delays or why they oppose bail. There is also what is referred to as an Alternative Dispute Resolution Mechanism (ADRM). A Supervising Prosecutor determines whether to oppose bail or divert a case through ADRM. There has been a moratorium on recruitment of prosecutors over the last 2 years. At the same time case-loads have doubled. As a result, there is often insufficient time to adequately prepare a case for hearing. This is coupled with lack of police investigative capacity. That can result in briefs being handed to prosecutors by police on the day of a hearing. There are also cases where the poor quality of the investigation undermines the chances of a successful prosecution. The large number of pre-trial detainees in South Africa, many of whom appear to be undocumented foreign nationals residing in the country’s larger urban areas, is the consequence of a number of factors such as immigration laws, a lack of court interpreters and an over-stretched police service. The Dept of Home Affairs can take a long time to determine whether a person is in the country legally. In cases where bail is denied over-stretched police officers may take a long time to complete their investigation. Detainees are monitored by the Dept. of Correctional Services (DCS) who arrange with police to escort accused persons to and from court.

The third speaker was Mr Yurii Bielousov from Ukraine: Mr Bielousov is the head of the Expert Center for Human Rights (Ukraine). He has over 15 years’ experience monitoring the observance of human rights by law enforcement and researching various aspects of the criminal justice system. From 2008-2010 he was the Deputy Head of the Human Rights Monitoring Department within the Ministry of the Interior and in that capacity, was an advisor to the Minister of the Interior. Mr Bielousov is also a member of the working groups on reform at the General Prosecutor’s Office, National Police and Ministry of Justice in Ukraine. He has a PhD in sociology and a Master’s Degree in Law and is the author of more than 50 publications including 5 scientific monographs and 12 manuals.

Mr Bielousov’s presentation was entitled: The role of the public prosecutor at the pre-trial stage of criminal proceedings: The Ukrainian context. The presentation was based on interviews with senior prosecutors, 3 focus groups consisting of prosecutors and procedural supervisors, 2 focus groups with lawyers, 1 focus group with investigating judges, 1 focus group with members of the National Police. There was also content analysis of numerous cases, proceedings of investigative judges, supervisory
proceedings, and completed proceedings in local courts. 503 prosecutors from local and regional offices also participated in a survey.

Basic facts: Ukraine is the largest country within Europe and has a population of 42.5 million. Some 5 years ago legislation was introduced to substantially reform criminal procedure in Ukraine. The Criminal Procedure Code of Ukraine significantly increased the role of the court at the pre-trial stage and extended the role of the prosecutor’s office to providing Procedural Guidance of pre-trial investigations. As a result, prosecutors have become central figures within a cooperative framework which includes pre-trial investigative agencies and the courts. The implementation of Procedural Guidance gave prosecutors a wide range of powers including the power to start a pre-trial investigation; to get full access to materials and documents; to assign investigative agencies to a pre-trial investigation; to make procedural decisions to extend or terminate a pre-trial investigation; to overturn illegitimate and ungrounded investigative findings; to notify individuals that they have become suspects; to enforce compulsory medical or educational measures; to discharge an individual from criminal liability; to prosecute on behalf of the state in court and to refer indictments to the court.

The presentation addressed the central issue of whether there had been any institutional transformation following the change in procedural legislation: The key findings were: There was no unity of understanding amongst prosecutors of the content, function and forms of implementation of Procedural Guidance: The term itself lacks a precise legislative definition. Despite clear legislative safeguards, prosecutorial independence and the principle of the immutability of the prosecutor have not always been respected. There is a considerable functional overlap between prosecutors and investigators which gives rise to potential conflicts of interest. The prosecutorial offices have an ad hoc approach to staffing and the distribution of balanced workloads. There is no calculation as to whether there are a sufficient number of prosecutors to investigate the number of cases requiring investigation. Some prosecutors do not fully understand that one of the main conditions for the admissibility of evidence in criminal proceedings turns on their role in relation to respecting the rights of suspect persons. Some prosecutors don’t understand that their function, as with law enforcement, is the protection of the community.

Professional training of Prosecutors. Raising the professional standards through training programmes
Wednesday 13 September @ 11:40 AM

(Workshop) Chair: Jean-Francois Thony, Prosecutor General, Court of Appeal of Colmar, France. Speakers: Manuel Pinheiro Freitas IAP Vice-President, Director General, Superior Law School of the Public Prosecution, Brazil, Christopher Toth, Deputy Executive Director, National Association of Attorney Generals and Director of the National Attorneys General Training and Research Institute, USA, Marina Matic Boskovic, Justice Reform Adviser, Association of Public Prosecutors and Deputy Public Prosecutors of Serbia.


The work as a prosecutor is a question of craftsmanship, my mentor told me when I joined the Swedish Prosecution Authority in the early spring of 2013. He also said that it would probably take me at least five years to get there, due to the wide range of duties that the job involves. A vital part of the way forward turned out to be the professional training I had.
During the workshop “Professional training of prosecutors” three interesting speeches were given. One with a more general approach, the other two more focused of the training of prosecutors in Serbia and Brazil. In this report, I will try to sum up the essence of this, indeed, thoughtful seminar. Basic training and supplementary training for prosecutors (but also for other professional categories such as paralegals, administrative and IT personnel) is crucial for several reasons; to make sure that prosecutors are effective and in coherence with the rule of law, to increase the likelihood that prosecutors will keep their commitment and dedication to the job, to allow prosecutors a chance to step out of the everyday struggle and instead get the possibility to “think bigger thoughts” together with other colleagues, but also to increase the chance that prosecutors, when getting confronted with a new situation or problem, can rely on their training and therefore keep calm and confident when handling the situation at hand.

In order to create a training environment that reflects both the practical and theoretical parts of being a prosecutor, it is important to also use professional prosecutors as teachers. By doing so the theoretical teaching will be merged with the practical reality. Furthermore, it is important that lectures are combined with practical exercises for the prosecutors to solve and discuss.

All speakers also mentioned the importance of ethical education and discussions. A prosecutor has a very important role in the judicial system, a role that comes with a lot of power and hence great responsibilities. A prosecutor’s ethical compass needs to be well linearized, since the prosecutor doesn’t serve any principal, but rather serves the truth and the justice. Another topic mentioned, as a vital part regarding professional training of prosecutors, was leadership and management training. An organisation is never better than its leaders, therefore the now mentioned training must not be forgotten or less prioritised than other prosecutor training.

Finally, there was consensus during the workshop about the importance of international co-operation and exchange of experience as a way to improve and develop the professional training of prosecutors, but also as a possibility to get new in-sights and broaden the international network between prosecutors.

To sum up, I do think that my mentor was right. It does indeed take quite a few years to learn the craftsmanship of being a prosecutor, and a vital part of getting there, but also of maintaining the craftsmanship, is education, both theoretical and practical. Hence, prosecution authorities around the world benefit from giving professional training to their prosecutors. As a result, prosecutors will be more self-assured, competent, ethical and effective, which benefits the judicial system. But also, equally important, society as a whole.
Prosecutors Exchange Programme

Special Plenary Presentation: Prosecutors Exchange Programme (PEP)
Tuesday 12 September @ 9:00 AM

Nicola Mahaffy, Crown Counsel, British Columbia, Canada, Nicholas Cowdery, Adjunct Professor of Law; former IAP President; former DPP of NSW, Australia; Christopher Toth, Deputy Executive Director, National Association of Attorney Generals and Director of the National Attorneys General Training and Research Institute, USA.

The speakers presented the recent year’s expansion of the programme participants as well as the new partnership with the Commonwealth Office. Furthermore, Chris Toth announced the good news that the National Association of Attorney Generals (USA) would sponsor the PEP programme financially.

Workshop on the Prosecutors Exchange Programme
Tuesday 12 September @ 11:30 AM

Facilitators: Nicola Mahaffy, Crown Counsel, British Columbia, Canada & Nicholas Cowdery, Adjunct Professor of Law; former IAP President; former DPP of NSW, Australia & Christopher Toth, Deputy Executive Director, National Association of Attorney Generals and Director of the National Attorneys General Training and Research Institute, USA. Speaker: Ganzorig Gombosuren, Head of the International Cooperation Department, Office of the Prosecutor General, Mongolia.

By Anne Constantin, Project Officer, French Ministry of Justice. Rapporteur.

The session focused on the IAP’s Prosecutors’ Exchange Program (PEP). The session allowed a discussion of how the program works, how prosecution offices can join the program and the benefits of the exchanges. The speakers gave examples of the types of exchanges that can take place under the program.

Criminal activity has become increasingly global. Prosecution offices from around the world must therefore work more closely together in order to combat crime and contribute to a peaceful and safe society. The goal of the PEP is to provide participating offices with opportunities to share knowledge and expertise and to develop relationships with one another. This will potentially lead to improved capacity and contribute to the professional development of prosecutors.

The session described an example of a PEP exchange programme between the Mongolian Prosecution Service and the Prosecution Office of British Columbia, Canada. The example provided a good way for the participants to understand how the program works. This particular exchange program involved several visits between Canadian and Mongolian prosecutors. The Mongolian prosecution office wanted to learn about the Canadian criminal justice system as part of a reform process that they were undertaking in Mongolia.

Mr. Ganzorig Gombosuren, Head, International Cooperation Department in the Office of the Prosecutor General of Mongolia, first informed the participants about different ways that his office has funded exchanges. Funding is often a crucial part of an exchange and it may take time and
efforts to secure. Mr. Gomborsuren explained the many steps taken to realize the partnership. A grant proposal was submitted to the British Embassy in Mongolia for funding. Once the funding was secured, the Mongolian and Canadian prosecution offices worked out in detail what the exchange would cover and the topics that would be discussed, and when and where the exchanges would take place. The first exchange took place in January 2012 and involved prosecutors from Mongolia traveling to Vancouver, Canada to meet with Canadian prosecutors. A second exchange took place a few months later with a Canadian prosecutor traveling to Mongolia. A third exchange took place in 2014 with a larger delegation of Mongolian prosecutors traveling to Canada. Finally, a fourth exchange is planned for 2018. Mr. Gomborsuren concluded that the PEP has been very beneficial for his office. In particular, the PEP has helped to improve the criminal judicial system, the Penal Code and the Criminal Procedure Code in Mongolia, which was recently enacted. Mr. Gomborsuren gave examples of legislative reforms that were enacted in Mongolia following the PEP, including legislation guaranteeing the rights of defendants and also providing a mechanism for criminal corporate liability.

Nicholas Cowdery explained that he has experienced this type of program in the Pacific Islands and that the benefits of such a programme are recognized by all participants. Mr. Cowdery also highlighted that the PEP is a flexible program that can be used not only for capacity building projects, but also for personal interest projects. Clear communication and planning is important to the success of any PEP exchange.

Nicola Mahaffy and Christopher Toth provided examples of different avenues that PEP participants can explore for sources of funding. Some international organizations have funding programs, but often the local embassies have small grants that are available for capacity building programs. Christopher Toth also informed the participants that NATGRI has provided a small grant to the PEP and the funds are expected to be available as of next summer.

Nicola Mahaffy informed the participants that the PEP Manual for this program which sets out in detail how the PEP works and the current participating offices can be found on the IAP website www.iap-association.org. For more details Nicola Mahaffy can be contacted at Nicola.Mahaffy@gov.bc.ca.

Investigating Corporations and their Roles in Human Trafficking – Special Interest Group Meeting (TIPP)
Tuesday 12 September @ 2:30 PM

Investigating Corporations for their Roles in Human Trafficking Chair: Salvatore Vasta, Judge, Federal Circuit Court of Australia Speakers: Sue Patten, Head of Organised Crime Division, Crown Prosecution Service, England and Wales; Lonneke van Zundert, Regional Head Security and Intelligence Management Asia and Middle East, ABN AMRO Bank N.V., Hong Kong; Sophia Lin, Legal and Policy Coordinator, ICAR, USA; Ye-Ting Woo, Resident Legal Advisor, Department of Justice, U.S. Embassy, China;

By Henriette Vincens Norring, Deputy Chief Prosecutor, Director of Public Prosecutions, Denmark. Rapporteur.
The framework for the workshop was set by the chair, Judge Salvatore Vesta, in describing the ongoing fight against human trafficking. Even though equality is taken for granted in many parts of the world, modern slavery exists all over, and it is time to further engage corporations in a battle that has been fought by law enforcement and the judiciary for many years.

The workshop speakers represented both government authorities by the presence of Sue Patten of the Crown Prosecution Service, UK, and Ye-Ting Woo of the Department of Justice, USA, as well as the private sector by the presence of Lonneke van Zundert of ABN Amro Bank, Hong Kong, and the civil society by the presence of Sophia Lin of International Corporate Accountability Roundtable (ICAR), USA.

One of the main points stressed by all speakers was that corporations should be held accountable for human trafficking taking place in their corporation or their supply chain. While acknowledging the lack of transparency in supply chains and difficulties for corporations in overseeing the entire chain, several speakers underlined the importance of providing corporations with an incentive to develop internal guidelines to combat human trafficking, but also to ensure accountability for corporations, who do not take the necessary steps, and finally to make it financially undesirable for a corporation to accept human trafficking in connection with their product.

From the prosecutorial point of view, Sue Patten and Ye-Ting Woo both highlighted the current problems in securing adequate evidence and ensuring accountability for corporations when prosecuting cases concerning human trafficking. It is important that the prosecutor use all available tools.

Sue Patten introduced the UK Modern Slavery Act from 2015, which has established a strategy where more administrative authorities are activated in the fight against human trafficking and now have both criminal and punitive powers, but which also activates the corporations themselves by requiring a statement on avoiding modern slavery from corporations of a certain size.

Yee-Ting Woo stressed the importance of also trying to prevent human trafficking by informing and educating both the consumer in their choice of product, the corporation in supervising their supply chain but also non-governmental organisations.

From the view of the private sector, Lonneke van Zundert explained many of the specific initiatives taken by ABN Amro Bank, which revolve around client and transaction monitoring, awareness building and intelligence sharing. In addition to the internal policies for client selection, the Bank conducts ongoing reviews to identify risk indicators associated with modern slavery as early as possible. An important aspect in this process is raising awareness in the entire corporation and education of both staff and clients in terms of identifying transactions and proceeds of human trafficking. Ms. van Zundert also underlined the importance of Public Private Partnerships and the positive evolution in the relationship between corporations and government authorities or law enforcement, where corporations are being invited as partners and share intelligence, thereby creating a combined effort to identify suspicious behaviour and combat human trafficking.

Finally, as a representative of the NGO ICAR, Sophia Lin echoed the importance raised by other speakers that corporations involved in human trafficking be brought to justice. Furthermore, Ms. Lin stressed that not only should trafficking in itself be prosecuted, but it is also vital to have laws, like the UK Modern Slavery Act, forcing corporations to document and disclose their efforts against human
trafficking in their corporation and supply chain, and enforce such laws against corporations who do not have the necessary policies to ensure compliance.

**Military Prosecutors Network (NMP)**

**Launch of the Network for Military Prosecutors**
*Monday 11 September @ 9:00 AM*

Colonel Bruce W. MacGregor, Director of Military Prosecutions, Canada & Lars Stevnsborg, Military Prosecutor General, Denmark

The presenters introduced the newly developed network, the rationality of its presence and future, and demonstrated the new website of the network as well as its administrative setup. The Network also held a closed Round-table for Military Prosecutors and for prosecutors dealing with military cases.

**IAP Military Prosecutors Network – Special Interest Meeting (NMP)**
*Monday 11 September @ 2:30 PM*

**Facilitators:** Colonel Bruce W. MacGregor, Director of Military Prosecutions, Canada & Lars Stevnsborg, Military Prosecutor General, Denmark. **Speakers:** Liane Grooters, Public Prosecutors Office, Arnhem, Dutch Militaryyy Service, Serge Brammertz Prosecutor of the International Criminal Tribunal for the former Yugoslavia (ICTY) and of the Mechanism for International Criminal Tribunals (MCIT), Richard Cawte, Deputy Director of Military Prosecutions, Australia.

*By Lars Morten Bjørkholt, Judge Advocate General, Norway. Rapporteur.*

The theme of the Special Interest Group Meeting (SIGM) was ‘Transnational Issues in Investigations During Military Operations Abroad’. The purpose of the meeting was to provide a forum for prosecutors involved in military prosecutions to discuss, share and exchange ideas and to explore possible models to facilitate transnational cooperation in cases concerning military operations in international frameworks of operations.

Colonel Cawte examined if best practice at the earliest stages following a serious incident will provide a basis for more complex cooperation. He also explored certain tensions that can exist between the immediacy of ‘incident management’ in an operational setting and what prosecutors prefer as the deliberate approach to an investigation. He focused on situations where the legal framework (e.g. SOFAs) and investigative capacity are inadequate or do not exist at all. He discussed different possible approaches: 1) to develop a universal standard for soldier/operator level crime scene preservation training, 2) to include procedures for investigations in the contingency planning and military doctrines of military operations, including an examination of coalition partners’ investigative resources.

Mrs. Grooters spoke about the Dutch experiences conducting investigations abroad, with a focus on the Jaloud case (ECtHR). The Jaloud case was a landmark decision with regard to the duty to
conduct an effective investigation even in difficult security conditions. Grooters also mentioned other international legal instruments that oblige states to conduct investigations. Post Jaloud, the Dutch Public Prosecution Service has developed an Investigation Manual providing for instructions aimed at guaranteeing the effectiveness of investigations. The manual identifies issues and possible courses of action in investigations during military operations abroad. The manual will also be published in English and is expected to be ready by the end of this year and offered for publication.

Mr. Brammertz discussed the role of the commander in respect of accountability for the behaviour of the troops. Brammertz discussed the landmark leadership cases post WWII and went on to give an overview of the lessons learned from the ICTY’s experience. The challenges encountered in making commanders criminally liable for failing to prevent and/or punish the crimes of their subordinates and other issues of relevance to contemporary armed conflicts. Although the jurisprudence of ICTY has confirmed that superiors can be held criminally responsible for the crimes of their subordinates, later cases have shown that the application of this doctrine to allied irregular forces that do not fall within the formal chain of command is somewhat limited (see the Hadzihasanovic case).

Mr. Brammertz advocated the view that the law of superior responsibility should be a living doctrine that takes into account the reality of contemporary armed conflicts.

The presentations gave the impression of an interest in further exploring possible cooperation in investigations between troop contributing nations in multinational operations. In light of the information we received on the upcoming Dutch manual one attendee suggested the need for an international investigation manual. This is in the view of this rapporteur a good proposal which should be further discussed in the NMP.
Is there a place for Restorative Justice in a Digital Age?

Tuesday 12 September @ 2:30 PM

Chair: Cheol-Kyu Hwang, IAP Vice-President, Chief Prosecutor, Daegu High Prosecutors’ Office, South Korea; Speakers: Jeeyoung Kim, Deputy Chief of International Cooperation Center, Supreme Prosecutors’ Office, South Korea, Anna Giudice Saget, Crime Prevention and Criminal Justice Officer, UNODC, Jean Fils Kleber Ntamack, Prosecutor General, Court of Appeal of Yaoundé, Cameroon.

By Ara Cho, Seoul Central District Prosecutors’ Office, National Prosecutor, South Korea. Rapporteur.

Ms. Jeeyoung Kim’s presentation was about the IAP Victim-Offender Mediation (VOM) guidelines for prosecutors. She introduced the historical and practical background of the draft and outlined the text of the draft guidelines. The draft consists of seven parts stipulating a three-step of the mediation process – referral, mediation, return and disposition of the case. Ms. Kim emphasized the importance of the parties’ voluntary consents prior to the referral. During the mediation process, the mediator’s competence, neutrality, and the fairness are the central values to be protected. The mediation may result in mitigating sentences or withdrawal of charge.

In the second part of the session, Ms. Anna Guidice Saget’s focused on the use of restorative justice in the context of juveniles. She specifically mentioned the ECOSOC resolution to specify the concept of restorative justice. She also presented the convention on the rights of the child (CRC) and other related international conventions. After that, she enumerated some key features of advisable restorative arrangements, such as voluntary engagement, active participation, dialogue, restorative outcome, etc. Advantages of implementing restorative justice to juvenile criminal justice were highlighted. In the end, she introduced recommended legislative actions.

In the third part of the session, Judge Jean Fils Kleber Ntamack reminded the participants of his country’s experience with restorative justice. He emphasized voluntary consents of the victims especially in serious cases. He mentioned victims who want to meet the offender and victims who do not and discussed issues surrounding this distinction. Also, he argued that restorative justice in the digital age is only in the beginning. Although digital technologies can make it easier to track offenders, it still needs to be applied to the judicial system as a solution for the traditional problems in adopting restorative justice. VOM can be one of the alternative processes for this purpose.

This session was a welcome opportunity to think about how to achieve restorative justice in the digital era. The VOM was regarded as an effective solution for the growing number of criminal disputes referred to the criminal justice system, both for adults and children. The IAP guidelines to be developed from now on will be a valuable contribution.
Environmental Crime – Special Interest Group Meeting
Thursday 14 September @ 11:30 AM

Facilitator: Kathleen Roussel, Director of Public Prosecutions and Deputy Attorney General of Canada. Speakers: Didier Alban A. Razafindralambo, First Deputy Prosecutor near Court of First Instance of Antananarivo, Madagascar, Zhang Xueqiao, Deputy Prosecutor General of the Supreme People’s Procuratorate, P.R. of China, Ahmad Barrak, Attorney General, Palestinian Public Prosecution Office, State of Palestine, Anatoly Palamarchuk, Head of the Main department of oversight over compliance to the federal legislation of the Prosecutor General’s Office of the Russian Federation.

By Laite Bokini-Ratu, State Counsel, Fiji Independent Commission Against Corruption, Fiji. Rapporteur.

The first of the speakers, Mr. Zhang Xueqiao, described the Chinese Government’s new environmental protection laws. Mr. Zhang emphasized that such innovative new laws were in line with the nation’s vision for promoting prosecution in the public interest so as to achieve a harmonious and peaceful society. Mr. Didier Razafindralambo, the First Deputy Prosecutor, Court of First Instance of Antananarivo, then discussed the challenges that the nation of Madagascar is facing with the illicit cutting and trafficking of its native Rosewood and Ebony trees. Mr. Razafindralambo also raised the concern that, although trafficking in Rosewood and Ebony seems to have slowed since 2014, there is still the possibility of trafficking being linked to transnational organised crime. The third speaker, Mr. Anatoly Palamarchuk, the Head of the Main Department of oversight over compliance to the federal legislation of the Prosecutor General’s Office of the Russian Federation, elaborated on the steps taken by his office to ensure that local government authorities were properly implementing environmental laws. Dr. Ahmad Barrak, the Attorney General of the Palestinian Public Prosecution Office from the State of Palestine, outlined the comprehensive body of environmental laws that has been enacted to curb environmental violations in the State of Palestine. Dr. Barrak furthermore stressed that international cooperation is central to achieving effective environmental protection.

Although the four speakers were sharing the experiences of their own vastly different nations, it was evident from their presentations that there is a consensus among them when it comes to the way that environmental crimes must be dealt with and the role that Prosecutors should play. Because environmental crime is serious, strong domestic legislation is needed. Furthermore, effective regional and global cooperation between nations is required to curb the link between environmental crime and transnational organised crime, corruption and money laundering. There is also a transnational need for Prosecutors to continue to work closely with other government agencies to effectively implement environmental protection laws, to prosecute offenders effectively, and to prevent future crimes.
IAP Anti-Corruption, Money-laundering, Asset recovery Network (NACP)
Thursday 14 September @ 11:30

Facilitators: Kamran Aliyev, Deputy Prosecutor General, Director of the Anti-Corruption Directorate with the Prosecutor General of the Republic of Azerbaijan & Julie Read, Director and Chief Executive, Serious Fraud Office, New Zealand. Speakers: Julie Read, Director and Chief Executive, Serious Fraud Office, New Zealand, Louis Van Niekerk, Senior State Advocate, South Africa, Alun Milford, General Counsel, Serious Fraud Office, United Kingdom.

By Isfandiyar Hajiyev, Senior Prosecutor, Organizational and Information Support Department, Anti-Corruption Directorate with the Prosecutor General of the Republic of Azerbaijan. Rapporteur.

The special interest group meeting of the NACP brought together highly qualified and experienced voices in the field of anti-corruption from vastly different jurisdictions. Mr. Aliyev provided an informative overview of the IAP NACP activities and the role of the network in answering actual operational needs of prosecutors by distribution of best practices in anti-corruption investigation, combatting money laundering and asset recovery. Ms. Read gave a presentation on responses to corruption risks in New Zealand and in particular on the mechanisms of measuring corruption and the role of integrity systems. The presentation was followed by a speech of Mr. van Niekerk discussing prosecution of complex and transnational crime of corruption and searching for an effective regional model for Africa based on the complementarity principle. Later Mr. Milford presented a review of deferred prosecution agreements (DPA) in England and Wales; also, he shared with the participants the mechanism through which to deal with corporations and demonstrated possible methodologies of prevention corruption in the private sector.

The meeting resulted in new delegates expressed interest in joining the IAP NACP network. Moreover, relevant manuals and handbooks were distributed.

Forum for International Criminal Justice & Conflict-related Sexual Violence (FICJ & PSV)
Thursday 14 September @11:30 AM


By Jacqueline Beckles, Senior Counsel and Team Leader, International Assistance Group, Department of Justice, Canada. Rapporteur.

In the international arena, when considering war crimes prosecutions, we must often be creative to accomplish the goal of justice for the victims and for society. In the example of bringing Chadian ex-president Hussain Habre to justice, the road was fraught with obstacles, including jurisdictional
issues. To achieve his prosecution, a special ad hoc court had to be created in Senegal with Belgium assuming jurisdiction over its nationals who were victims of the atrocities committed by Habré in order to accomplish the goal.

In other cases, such as in Italy, the search for justice is impeded by delay where prosecutions of Nazi war criminals took place some 70 years after the offences had been committed. These cases were greatly assisted by the absence of a statute of limitation in war crimes prosecutions. It must also be considered as stated by Mr. De Paolis in his discussion, that the consequences of these crimes are perpetual. There is no statute of limitations on the damage caused to the victims and their families. Therefore, it is essential to society’s interest to be able to prosecute the offenders when they are located to hold them accountable for their actions.

One aspect of military law that must also be considered is that of the execution of a superior’s unlawful orders. The complexities and far reaching implications and resource issues arising from investigating crimes that are carried out by subordinates in execution of their superior’s orders cannot be ignored or understated. However, it is important to note that it would be impossible for serious war crimes to be perpetrated without the cooperation and intervention of collaborators who translate the unlawful orders into action. These perpetrators must be held accountable for their actions as much as the commander giving the unlawful order.

Finally, countries must take responsibility for the actions of their military forces perpetrated against innocent parties. Whether that responsibility comes in the form of restitution or damages paid to the victims of the crimes committed during times of war, or policy or structural changes to ensure that the offenders are prosecuted, in a manner which aligns with national and international standards of judicial independence and the rule of law.

For the public, both national and international, war time conflicts often mean the suspension of rights and civil liberties. It is important for the society to keep in mind that there are rules to armed conflicts and the global military forces will be held accountable for breaches to those rules in a way that is transparent.