

PARLIAMENTARY ASSEMBLY OF THE BLACK SEA ECONOMIC COOPERATION
PABSEC

LEGAL AND POLITICAL AFFAIRS COMMITTEE

Doc.: LC 2411/96

Kyiv, 30 October 1996

REPORT

BASIC PRINCIPLES OF THE BLACK SEA CONVENTION
ON COMBATING ORGANISED CRIME AND TERRORISM

Rapporteur : Mr. Gennadiy VASSYLYEV, Member of the Legal and Political
Affairs Committee (Ukraine)

INTRODUCTION

Organised crime represents a serious problem confronting the countries of the Black Sea. Despite the measures undertaken through international agreements and domestic legislation the problem continues to grow enabling criminals to enjoy the proceeds from the illicit activity paralysing democratic development and striking at the rule of law.

Given the importance to the issue, the PABSEC Legal and Political Affairs Committee discussed the Cooperation among the PABSEC Member Countries in Combating Organised Crime (Report presented by Mr. Mikhail Sidorov, Moldova) at the Seventh Meeting in Bucharest on 10-11 April 1996 tackling the spectrum of organised crime in the member countries, its nature, scope and extent trying to give analyses through the investigation of prevailing problems and to outline legislative mechanisms for integrating efforts for combating organised crime in the Black Sea area. The report emphasised future threats to the region from the organised crime and suggested further national and international actions that could be taken to improve cooperation in combating organised crime.

Subsequently, the Seventh General Assembly in Baku on 12 June 1996 adopted the Recommendation 15/1996 on Cooperation among the PABSEC Member Countries in Combating Organised Crime stressing that solutions to that global problem would never be found without proper cooperation between the countries at national, regional and international levels. The Assembly proposed to draw up a regional convention against organised crime. To that end the Committee was asked "to consider at its meeting in Autumn 1996 elaboration of basic principles for a draft Black Sea Convention on Combating Organised Crime with due regard to relevant documents adopted by the United Nations, the Council of Europe and other international organisations".

The present report has been prepared pursuant to this recommendation and reproduces points of view of the national delegations on the basic principles of the Black Sea Convention. It is designed to review and examine priority issues and to make recommendations to the relevant authorities for implementation of measures to reduce the impact of organised crime and ensure closer cooperation between the member states' police and customs offices in order to toughen control, to better intelligence-gathering and sharing and to undertake actions to counteract organised crime and associated offences.

Among the PABSEC member delegations Azerbaijan, Moldova, Romania, Russian Federation and Ukraine submitted information. On the other hand, the Secretariat sought to obtain and study relevant documents from other sources including those of the United Nations, the Council of Europe, OSCE, BSEC and other international bodies. The present Report is drafted according to the above mentioned materials and

is to be complemented at the eighth meeting of the Committee in Kyiv on 30-31 October 1996.

In addition, taken into account that the initiative to deal with the organised crime was shared by the BSEC who agreed “to invite the PABSEC for creating an appropriate legal bilateral and multilateral framework with a view of combating organised crime”, the results of the meeting of BSEC Ministers of Internal Affairs held in Yerevan on 16-17 October 1996 had been taken into consideration when preparing the Report and the Recommendation.

ORGANISED CRIME AS A PROBLEM TO SOCIETY

The current situation in the Black Sea region do not differ much from the one described in the previous report of the Committee six months ago, although some positive changes are detected within the legal and judicial systems and activities of the enforcement agencies.

The ability of organised crime to quickly alter and adapt to the new social, economic and legal conditions maintaining its survival, determines the growth of its transborder network. At the same time, constraints placed on the governments in democratic society limiting law enforcement efforts give hand to a greater extent to development of organised criminal actions.

The organised crime developing rapidly and involving more groups in itself continues to be the subject of world-wide concern.

According to the recent studies the world’s population will be reaching nearly 7 billion by the year 2000 and especially increase will be in the 15-25 age groups, which is the most highly crime-prone. It is estimated that even if the crime rate remains stable, crime will increase in proportion to the increases in highrisk groups. These trends will be reinforced by economic trends and it is expected to further widen the gap between rich and poor what will likely foster social unrest and instability.

Violence, intimidation and corruption, elimination of interference of law enforcement officials enable the criminal groups and armed bands still to find themselves well-positioned to influence economic reforms and manipulate weak political and judicial institutions. Moreover, revenues gained by criminal activities often funnelled into legitimate business pose threat to financial stability and economic growth of the countries.

Current political situation in the Black Sea region with efforts to bring countries closer together and increase free movement of goods, capital and people gives wide opportunity to organised criminal groups to take advantage and to search for new markets. Organised crime has already spread its tentacles over the parts with internal conflicts and ethnic thrives.

The countries in transition overtaken by rapid political and socio-economic changes found themselves in the milieu of sophistication of crime, with which they are ill-equipped to deal. Obsolete criminal code and lack of trained personnel have made most criminal justice systems a poor match for criminals disposing of the latest technological means. Legal reform including new penal codes and codes of criminal procedure ranks high on the list of priority topics as does special legislation to deal with particularly awesome problems like organised crime, money laundering and corruption.

Among the wide range of organised crime offences drug and weapon trafficking, trade in radioactive and toxic materials, ammunition and explosives, forging documents, smuggling of raw materials and military hardware, executions, prostitution, corruption, terrorism and money laundering could be pointed out as most prevailing in the Black Sea region.

That is why the problem complex approach, so that better ways be devised against organised crime and related offences.

ACTIONS AGAINST ORGANISED CRIME

The political will of the countries to respond to threat of the organised crime generated their overall effort to counteract it through the international, regional and national mechanisms embracing numerous measures dealing wholly or partly with the subject of organised crime.

A wide range existing international conventions and other documents related to combating organised crime are as follows:

The United Nations:

- The Vienna Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (December 1988).
- The Crime Prevention and Criminal Justice Programme endorsed by the General Assembly resolution 49/158 of 23 December 1994 stressing direct relevance of crime prevention and criminal justice to sustained development, stability, security and improved quality of life; urgent need to increase technical cooperation activities in order to assist countries with special emphasis on those in transition; training and upgrading national capacities and to improve regional, interregional and international cooperation and coordination of activities aimed at combating crime.
- The United Nations World Ministerial Conference on Organised Transnational Crime held in Naples in November 1994 (report 49/748), pointing out prevailing vacuum created by institutional breakdown and dwindling social controls; stating

that organised crime is likely to be counteracted by complex emergencies where mutual trust and efficiency are essential.

- The General Assembly Resolution 49/159 of 23 December 1994 on Naples Political Declaration and Global Action Plan against Organised Transnational Crime urging states to implement them as a matter of urgency.
- Resolutions of the UN Commission on Crime Prevention and Criminal Justice and Economic and Social Council on: priority themes like transnational organised crime, smuggling of illegal migrants; implementation of the international instruments for mutual assistance in criminal matters; different aspects of bilateral and multilateral cooperation.
- Recommendation of the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Cairo, 1995) on links between terrorist crimes and transnational organised crime and on international instrument like convention against organised transnational crime.
- The General Assembly Resolution 49/60 of 2 December 1994 on Measures to Eliminate International Terrorism which express concern at the growing and dangerous links between terrorist groups and drug traffickers which have resorted to all types of violence and underlines the determination to eliminate terrorism in all its forms and manifestations.
- The General Assembly Resolutions 48/122 of 24 November 1993, 49/185 of 13 December 1994, 50/186 of 13 December 1995 and the UN Commission on Human Rights Resolution 1996/47 all titled as Human Rights and Terrorism and which concern the connection between terrorist groups and other criminal organisations and condemn all acts, methods and practices of terrorism as activities aimed at the destruction of human rights.

The Council of Europe:

- European Convention on Extradition (1957)
- European Convention on mutual Assistance in Criminal Matters (1959)
- European Convention on the Suppression of Terrorism (1977)
- Recommendation 1044 of the Parliamentary Assembly of the Council of Europe on international crime (1984).
- The Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (November 1990) designed to complement the UN Vienna Convention, aimed to harmonise national legislation and to facilitate international cooperation in search, seizure and confiscation of the proceeds of drug related other serious crimes.

- The resolutions of the Council of Europe's two Pan European Ministerial Conferences on Cooperation on Illicit Drug Abuse Problems respectively in May 1991 and in February 1994.
- The Resolution of the 19th Conference of European Ministers of Justice in Valetta in June 1994 dedicated to the problem of drug-related crime.
- Actions undertaken by Pompidou Group - subsidiary body of the Council of Europe - dealing with the international drug problem through mechanism of international coordination against drug trafficking and money laundering.

Other initiatives

- Activities of Interpol set forth in resolutions on: cooperation in combating serious economic crimes having considerable financial impact (1992); implementation of the United Nations Vienna Convention (1989); international fraud (1983); money laundering (1995).
- The European Union PHARE programme providing training to eastern European police and customs forces as well as assistance in drafting drug trafficking and money laundering legislation.
- FATF/OECD/BSEC Seminar on money laundering (Istanbul, April 1996) dedicated to problems of money laundering and counter measures at national level devised by law enforcement agencies.
- Meeting of the BSEC Ministers of the Internal Affairs on crime prevention, Yerevan, 16-17 October 1996.

Having in mind the threat of the organised crime infiltrating and attaining control in crucial sectors of the economies, the Black Sea member countries decided to put on the agenda elaboration of regional mechanism to combat organised crime.

The High Level Meeting of the BSEC Participating States in Bucharest on 30 June 1995 adopted the Statement stressing that cooperation process in the Black Sea Region "will be facilitated by undertaking concerted actions through bilateral agreements with a view of combating organised crime, drug dealing, illicit traffic of weapons and radioactive materials, all acts of terrorism and illegal border crossings".

The Statement was followed by the resolution of the Sixth meeting of the Ministers of the Foreign Affairs of the BSEC Participating States held in Chisinau in November 1995 "to invite the PABSEC and to provide for its assistance for creating an appropriate legal bilateral and multilateral framework with a view of combating organised crime, drug dealing, illicit weapons and radioactive materials, all acts of terrorism and illegal border crossings in the BSEC region".

Accordingly, the PABSEC General Assembly in June 1996 adopted the recommendation on cooperation of the Black Sea countries in combating organised crime stressing the need of the regional convention uniting efforts of the member countries to fight against organised crime.

THE BLACK SEA CONVENTION ON COMBATING ORGANISED CRIME AND TERRORISM

The Black Sea convention on combating organised crime and terrorism should become the final phase of the comprehensive process of cooperation between the BSEC member countries launched by bilateral treaties and agreements. It should be designed to identify specific measures to make action against organised crime more effective, mobilise mutual support and assistance of the member countries in adapting legislation and enforcement methods to present challenges.

Given the multi-layered character of the approach to organised crime phenomenon it could be discussed whether the convention be a “traditional” one or so-called “framework” convention coupled with several protocols on specific topics of combating organised crime.

The convention should be prepared by a governmental committee of experts who will look deeply in the subject of organised crime in the Black Sea region, elaborating the text in line with relevant conventions of the United Nations and Council of Europe.

It is very important that the convention should contain a monitoring mechanism to follow up effective implementation of the provisions in the countries.

Priority issues and objectives for the Black Sea Convention on combating organised crime presented by the delegations of Azerbaijan, Moldova, Romania, Russian Federation and Ukraine are as follows:

- The purpose of the convention is to coordinate efforts against organised crime by complementing or modifying existing mutual arrangements. This combating measures must be founded on the respect for fundamental rights, international law and constitutions of member states.
- One of the major objectives of the convention has to be to tailor common policy against the organised crime so that to reduce its impact on society by maintaining existing bilateral mechanisms and develop further effective programmes.
- Legislation is one of the prominent targets among the policies to combat organised crime as one of the primary tools at the disposal of the governments to protect security of the society. It should be structured in such a way as to direct severe blows to organised crime groups at points where they would be most effective defeating the economic power of criminal organisations, such as introduction of reforms focused on laundering of criminal proceeds enforced by sanctions and

confiscation of illicit proceeds. At the same time, measures should be put in effect for improvement of criminal justice systems of the countries with weaker systems directed against organised crime.

- The capacity to prevent and control organised crime depends largely on availability of reliable information about its characteristics and structure of illicit activities in each country. To this end establishment of mechanisms for exchange and evaluation of up-dated information on the current situation is to be improved. At the same time setting up of the intelligence agencies to monitor situations might be encouraged.
- Extradition between the contracted states is considered to be particularly effective measure to prevent transnationalisation of organised crime and ensure that offenders are swiftly brought to justice. A mechanism and certain procedure should be envisaged for the authorities issuing extradition request related to persons accused or convicted of organised crime and the requested state. This will facilitate conduction of searching operations and taking investigation measures (arrest, conviction, etc.) in order to prevent, detect and investigate committed serious organised crimes.
- A special attention should be attached to improvement of cooperation between the border authorities and the enlargement of contacts between the police and customs officers aimed at combating crime and organised crime as one of its forms.
- Cooperation in Combating organised crime should be based on solidarity in coordination of measures to exert pressure on any sponsors and supporters of serious crimes such as terrorism, drug trafficking, etc.

The elaboration of the convention will be a long process requiring a framework within which states could pursue regularising effect for a more systematised form of cooperation. The Convention will provide set of standards that the signatories have an obligation to live up to.

CONCLUSIONS

The Black Sea Countries, aware of the complicated political and socio-economic climate in the region and threat from the criminological situation created in most of the states in the region, pursuant to the resolutions adopted at the level of Heads of State or Government, are to conclude that elaboration of the Black Sea Convention on Combating Organised Crime and Terrorism has become the matter of urgent demand.
