

THE IMPORTANCE OF INTERNATIONAL TREATIES IN THE FIELD OF INTERNATIONAL POLICE COOPERATION

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ABSTRACT

The importance of international treaties in the field of international police cooperation in combating crime with global proportions would be faded, but also it would be impossible if international legal mechanisms are not meet. Seeing permanent risk through the appearance of various forms of organized crime in contemporary society, the states have made continuous efforts to achieve their objectives in preventing and combating it through bilateral and multilateral agreements. The forms of international organized crime have sparked the attention of democratic world and governments to consolidate and obtain tools in order to implement efficient instruments of cooperation. In this context, I have considered the importance of bilateral or multilateral conventions and their impact on providing of legal grounds for international cooperation between states in preventing and combating the organized crime and forms of its appearance. Resolving the current issues in the international arena, in the focus of criminal matters through the principles of the international law, essentially of international conventions, is considered as an imperative of the time. Certainly, in the frames of these activities the United Nations Organization (UN), European Union (EU), or the Association of Southeast Asian Nations (ASEAN), played an important role and performed a very great job. On the other hand beside the agreements with international organizations states pay attention also to bilateral agreements in order to establish a legal ground and adjust their policies in respect to legal requirements deriving from treaties. In an effort to complete the picture of this work as far as possible, this research emphasizes the importance of international treaties on providing aspects of establishment, role, function, and international police cooperation on multilateral scale, and on providing of an opportunity to study a bilateral or interstate frame agreement in the field of international police cooperation between the Republic of Kosovo and the Helvetic state.

Keywords: The state, organizations, international treaty, international police cooperation.

INTRODUCTION

We are witnessing that the XXI century undoubtedly can be considered as the century of great technical evolution and technology. The spread of modern technology with very rapid rhythm has put the world into a system and communication links so close that the individuals, national and international organizations, countries, different national agencies and multinational, large corporations connected through different communication networks and placement of information that enables different service delivery within very short time. In this evolving technology, the question arises: could have the possibility that the countries from all continents to this rapid development of technology to oppose adequately in terms of preventing and combating negative phenomenon in contemporary societies? No doubt, that with all efforts, whether are these national through the creation of different legal mechanisms, national strategies, action plans, special laws, agencies, specifically against anti-social

phenomena and till to different forms of fighting corruption and organized crime cannot succeed as single and successful.

Efforts for preventing and combating the terrorism and organized crime have shown the immediate need to create forms of communication interstate cooperation and international as the only key to solving international issues in this area. States were shown in this aspect powerless to cope alone in the fight against these global evils. Information and communication tools have been developed to that extent that makes it very difficult catching dangerous criminals and terrorists who have created funds and assets through illegal activities. In order to cut the ways of these activities are also enabling various organizations such as universal as is United Nations Organization, but also those continental or regional which provided all the necessary potential technical and human resources to create mechanisms that will provide the necessary legal basis in order to open the way for concrete cooperation in fighting more efficiently the illegal activities.

Through these organizations, states except signing of international treaties, also have organized conferences, symposiums, seminars, debates and engagement of scientific academies which have been aimed finding the ways and options more practical and successful which will go in favor of state agencies for an efficient police cooperation between states.

THE WILL OF STATES FOR COOPERATION

The efforts of countries in the field of international cooperation in view of the special police field have existed much earlier than are contemporary forms of cooperation against international crime. At their start, the states have been more concentrated in connection agreements and bilateral cooperation. The willingness and readiness of countries and the forces of law enforcement has been a challenge for many years to the occurrence of the phenomenon of crime. In this directions the states have paid more and developing their activities in terms of raising the capacity and technical and legal mechanisms for troubling the path towards improving the agenda in combating of all forms of crime, especially that organized and transnational. These forms are enabled thanks to the interstate cooperation as a common interest.

Signature and adherence in international treaties by states has enabled that the law enforcement agencies, especially to the police in order to prepare for greater challenges in the common fight against negative phenomenon that have gripped modern societies. Different arrest of the criminals who deal with narcotics trafficking, human beings, weapons trafficking, prostitution, sexual abuse, cybercrimes, the other was made possible as a result of interstate cooperation.

International agreements usually are developed between countries that have divided common borders or have been part of a common geographic region, and the structure of cooperation established by these agreements has been focused on police operations or has addressed a specific problem of the crime as narcotics trafficking or smuggling.¹ Bilateral agreements have involved reciprocal cooperation, services and exchange of information between the two countries. The social aspect, cultural and traditional has also been a factor partly important which has determined in the formulation of types of agreements between states. States also

¹ Daniel J.Koening and Dilip K.Das, *International Police Cooperation, A world Perspective*,2001, page 4-5.

having similar language, legal tradition and similar criminal problems have attempted to create lot of agreement which necessarily were inclined and influenced by good will and political climate between them.²

In this regard important role have played by the elimination of internal borders between states such as in the European Union where countries have established common internal markets, thus was creating the need for police cooperation is even higher. This cooperation in the exchange of information and links of the different bilateral agreements and multinational as a common factor in the coordination and closer cooperation between police forces, first of all has arisen as a result of circumstances and considering that the crime is changing and growing too fast. After the '90s of the last century with the collapse of the communist system, many states have embraced the values of democracy, free market and free movement of people and goods, and this has created favorable environment also for criminals. Freedom of movement has created circumstances that perpetrator to move freely from one country to another, which has also created difficulties in identifying, capturing and handing over them to justice. Considering these aspects and created favors, the criminality is moving faster than police agencies, prosecutorial and judicial.

Even if the jurisdiction is established in many countries or has agreed in a particular case that involves more than one national territory, it is likely that law enforcement forces (police) would still need help and cooperation in the fields for gathering the information, arresting the perpetrators of criminal acts, procurement of evidence, interrogation of witnesses, confiscation of illegal funds, and concerns of extradition. For this reason, as we mentioned above requires a rapid coordination, harmonization of legislative aspect between countries in terms of cooperation and mutual legal assistance.

HARMONIZATION OF INTERNAL LAW WITH INTERNATIONAL TREATIES

International treaties are agreements between two or more states that are interested in a particular matter based on which the rights and obligations are provided for parties. These treaties which depend on the area that can be regulated may be called also conventions or protocols by the character can be universal, open to all interested countries to join or to be limited to a small group of two or more states. Obligations that contain an international treaty rely upon the consent of the parties. States with the signing of these treaties undertake to ensure that legislation, policies and internal practices to match and be harmonized with the treaty.

TREATMENT OF INTERNATIONAL TREATIES ACCORDING TO CONSTITUTION OF REPUBLIC OF KOSOVO

Looking at the internal aspect of the legal framework in the field of international cooperation in the Republic of Kosovo should be noted that in this direction has been given a special importance. If we look at the highest legal act of the country the Constitution of the Republic of Kosovo,³ in the first chapter, article (17), was given exactly to the international agreements. In Article (17), paragraph (1) states that: The Republic of Kosovo concludes international agreements and joins in the international organizations. While paragraph (2) states that: The Republic of Kosovo participates in international cooperation in the promotion

² Ibid, page 6.

³ Constitution of Republic of Kosovo, entered in to force on april 09, 2008.

of the protection of peace, security and human rights. Precisely if we analyze the article (17), paragraph (1) clearly shows that the state of Kosovo signed international agreements which means that in this direction Kosovo is interested and willing to be part of international agreements being aware that the international agreements contribute to the safety and resolve regional and international issues.

Also Republic of Kosovo gives particular importance to the membership in international organizations, whether regional or global, considering that membership in this organization moved toward integrated processes of Republic of Kosovo and become equal and stable partner in international area. Obviously at this stage for the state of Kosovo were raised a number of difficulties that the entire process in the field of international police cooperation but not only this area make it very difficult and sometimes almost impossible. For Kosovo there are still obstacles which currently are non-surmountable as e.g. membership in international police organizations related to security issues such as INTERPOL, EUROPOL, SECI, FRONTEX, etc. Membership in these international organizations is connected directly to the status of Kosovo in the United Nations Organization, or in EU, regional security organizations and other international mechanisms. For this reason, Kosovo is focused almost more in bilateral (state-state) considering that for the moment is an essential solution and without alternative.

Transnational and asymmetric nature of contemporary challenges, risks and threats to security have contributed to the fact that security is inseparable, and as we said is always clear that no state is able that independently solve the complex problems of security and strengthening national security.⁴ Seeing from this prism, the answer to a number of disorders in the world, and asymmetric threats against peace and security, noticed in the integration of the national security system, strengthening of multilateral security forums and collective international security system.⁵ Also in Article 17, paragraph (2), consider that Republic of Kosovo is interested and engaged in international cooperation to promote democratic values and Euro-Atlantic security and protection of the human rights and freedoms from its mechanisms institutional of law enforcement.

At the same time respecting of human rights while conducting investigations procedures in cases of international police cooperation, the arrest of persons of foreign nationality, interrogation and until their handover (extradition) to the interested state are criteria and values that given a special treatment by the police, prosecutorial, and judicial institutions of Kosovo. Kosovo's goal is the protect human rights in accordance with highest international legal act, as are the Universal Declaration of Human Rights (1948), the International Convention on Civil and Political Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Framework Convention for the Protection of National Minorities of the Council of Europe and other ratified international treaties. In this direction the intention of the Republic of Kosovo and undoubtedly also the foreign policy is strengthening the international position through treaties which would create a positive climate in improving international police cooperation policies.

Another act of legal constitution that regulates the conditions and procedures in the field of international cooperation between the Republic of Kosovo and other states is the Law no. 04 / L-31, for International Judicial Cooperation in Criminal Matters. This cooperation is

⁴ Enver Hasani & Ivan Cukalovic, *Commentary of Constitution of Republic of Kosovo*, I edition, 2013, page 65.

⁵ Ibid.

envisaged since the article (1), paragraph (1) and when the issue is not regulated by international agreements.⁶

THE ROLE OF INTERNATIONAL TREATIES

The fight against organized crime in the context of international police cooperation and forms of its appearance manifested through approval of various international legal instruments such as treaties, conventions, resolutions and other different normative acts of cooperation between states. Cooperation in this direction has emerged as cooperation between two or more states. In this context are recognized multilateral and bilateral agreements. International legal instruments undoubtedly the most important instruments adopted by the United Nations, but of course the undisputed importance have also other regional and bilateral agreements. In the European Union have computerized system of information exchange known as the Schengen Information System which has been set by the implementation of the Schengen Convention, signed in 1990 and has facilitated police and judicial cooperation in criminal matters for signatory states.⁷ This system has been created as a compensator measure for freedom of movement created after the merger of the borders to ensure that the borders have become open for police services, as they are the criminals. As regards bilateral agreements, these are the most frequent and numerous in practice. There are numerous agreements of this kind also in cooperation between countries in the fight against organized crime. All states have created their strategy and action plans to combat organized crime and its appearance forms, in this case have signed various cooperation agreements with other countries, especially neighboring countries.

The interstate collaborations mainly are created in borders that are suitable for smuggling areas, such cooperation exists between as e.g. Italy and Albania⁸, the fact that the maritime routes are being used quite a lot for the smuggling of drugs and human beings. There are many such collaborations between states to prevent crime and smuggling in all regions of the world. Fundamental elements necessary for police cooperation are based on trust and communication. "Where there is cooperation, there is faith and where is faith, there exists also the cooperation".⁹

In the aspect of combating of organized crime and international cooperation special importance has United Nations Convention against International Organized Crime (UNTOC) and its protocols. Also a special role has the United Nations Office on Drugs and Crime (UNODC) within which were held conferences and various committees have been established. Most multilateral treaties (that include more than just a few states) signed under the auspices of international organizations like the UN, or regional organizations such as the Council of Europe (CoE) or the European Union (EU),¹⁰

⁶ Law nr. 04/1-31, Republic of Kosovo, for international law cooperation in criminal matters.

⁷ Frederic Lemieux, *International Police Cooperation, Emerging Issues, Theory and practice*, 2010, page.30.

⁸ Italy-Albania: *Legal Instruments and Technics of fighting against transnational organized crime*, Edition Unicri, 2007.

⁹ Frederic Lemieux, *International Police Cooperation, Emerging Issues, Theory and practice*, 2010, page 27.

¹⁰ UNODC, *Trafficking of Human Beings & Smuggling of Migrants*, Manual for international cooperation, 2010.

UNITED NATION CONVENTION AGAINST ORGANIZED CRIME (UNTOC)

Considered as important instrument under international treaties regarding international organized crime. United Nations Convention against Organized Crime, was approved by General Assembly resolution 55/25 of 15 November 2000. As provided in section (1) of the Convention¹¹, its aim is to encourage and promoting cooperation between states to prevent and combat more effectively the organized crime. It is open for signature by member states in high-level political conference called for this purpose in Palermo, Italy, from 12-15 December 2000 and entered into force on 29 September 2003. The Convention serves to the States in order to seek the mutual assistance Remedies for a range of issues, among other as:

- Obtaining of the evidences
- Realization of service of official documents,
- Execution of controls,
- Identification of the proceeds of crime,
- Extracting information and documentation, as well as encouraged to:
 - To establish the joint investigative bodies,
 - To reach formal agreement on the use of special investigative techniques,
 - To increase even when is necessary, establish communication channels to enable safe exchange of information quickly etc,

Convention further complemented by three Protocols, which reach specific areas and manifestations of organized crime:

- **Protocol to Prevent, disappearance and Punishment of Trafficking in Persons, especially Women and Children**, entered into force on 25 December 2003, and represents the first global instrument legally binding, and the agreement with the definition of trafficking in persons. The purpose of this was to facilitate convergence in national approaches concerning domestic criminal offenses that would help efficient international cooperation in investigating and prosecuting cases of trafficking in persons.
- **Protocol against the Smuggling of Migrants by Land, Sea and Air**, entered into force on 28 January 2004. The purpose of this Protocol is to prevent and combat the smuggling of migrants, as well as promoting cooperation among States parties.
- **Protocol against the illegal producing and Trafficking in Firearms, their parts and components and ammunition**¹², has entered into force on 31 July 2005. The objective of the protocol, which has been the first binding instrument of small arms that was adopted in global scale, is to promote, facilitate and strengthen the cooperation among States Parties and to prevent, combat and eradication of the illegal production and trafficking of firearms and their parts and components and ammunition.

So as seen in this Convention and its three additional protocols main principle and primary emphasis is given the cooperation among States Parties as carriers of promoting and strengthening responsibility and respect for the sovereignty and integrity of states while not interfering in their internal affairs.

¹¹ United Nations Convention Against Transnational Organized Crime, A/RES/55/25.

¹² Office of United Nations for Drugs and Crime, web page:<http://www.unodc.org/>

UNITED NATION CONVENTION AGAINST CORRUPTION

The text of the United Nations Convention against Corruption was negotiated during the seventh session of the Ad Hoc Committee for the negotiation of the Convention against Corruption, held from 21 January 2002 and 1 October 2003. The Convention adopted by the Ad Hoc Committee was adopted by the Assembly of general Resolution 58/4 dated 31 October 2003.¹³ In accordance with article 68 (1) of resolution 58/4, United Nations Convention against corruption has entered in power since 14th of December 2005. The importance of this Conventions related to the cooperation of United Nations between states was provided exactly in the chapter IV, article 43 which is more accurately in the international cooperation.

In article (43), paragraph (1), it is mentioned that the party states should cooperate in criminal matters, in accordance with articles from 44 to 50 of this Convention. When it is 0ble and in accordance with internal legislation, Party States should take in consideration assisting each other in investigation and proceedings in civil and administrative matters that has to do with corruption.¹⁴

SOUTHEAST CONVENTION FOR POLICE COOPERATION

In Article (1) of this Convention is provided that the contracted parties has the intention in order to strengthen the cooperation between them regarding the fight against the threats to the public safety and/or public order, as well the prevention, revealing and police investigation of criminal acts.¹⁵ Contracted Party of this Convention is: Republic of Albania, Bosna and Herzegovina, Republic of Macedonia, Republic of Moldavia, Rumania and the State Union of Serbia and Montenegro. The aim of this Convention is to cooperate for fulfilling of joint interests of security, combatting effectively of cross-border threats to public order and security and international crime by entering into a partnership for security and aiming of further intensification of police cooperation and strengthen mutual assistance in police matters.

THE ROLE OF CONFERENCES AND CONGRESSES IN THE FIELD OF INTERNATIONAL COOPERATION

United Nations Congress on Crime Prevention and Criminal Justice are one of the main periodic conferences of United Nations and plays a major role in setting international standards and policymaking in crime prevention and criminal justice. Congresses have joined and brought the ideas to policy makers and practitioners in the field of international cooperation and crime prevention.

In 1990, at the 8th Congress of the United Nations, a special importance was given to the problem of international of silent cooperation regarding the execution of seizures important income of criminal origin in foreign territories. In this regard was adopted, with a resolution in 1991, the model of the treaty that has for object legal assistance in criminal matters, by which the Assembly called upon all States to strengthen mutual cooperation and to fight more effectively the crime of national trans.¹⁶ This treaty does not limit its scope only to mutual

¹³ Ibid.

¹⁴ United Nation Convention against Corruption, article 43.

¹⁵ Southeast European Convention for police cooperation, article 1.

¹⁶ <http://www.punetebrendshme.gov.al/al/legjislacioni>.

assistance between judicial authorities but includes the requests for cooperation in criminal aspect raised by the police authorities.¹⁷

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KOSOVO AND FEDERAL COUNCIL OF SWITZERLAND FOR POLICE COOPERATION ON COMBATING CRIME

The agreement represents one of the most important bilateral agreements of the Republic of Kosovo in the field of police cooperation. This agreement was signed on 06.11.2013, between the Minister of Internal Affairs of the Republic of Kosovo and Director General of the Federal Office of Police Switzerland.¹⁸ By signing of this agreement strengthened the cooperation between the two countries in the fight against organized crime, trafficking in human beings, trafficking in arms, narcotic substances and intent of preventing threats to public safety by exchanging information on strategic levels etc. This agreement is divided into six chapters and contains a total of 28 articles. Based on this agreement it is decided that the authorities to cooperate directly with each other in the coordination of the activities of their agencies of law enforcement. As forms of cooperation provided by Article (3), are all the forms of criminal acts such as:

- Organized Crime
- Terrorism and its financing
- Trafficking with human being and smuggling with migrants,
- Sexual exploitation of children and child pornography,
- Cyber-crime,
- Unlawful trafficking of narcotics, psychotropic substances,
- Robbery and theft,
- Counterfeit money, means of payment or official documents including customs documents,
- Money laundering and corruption,

Parties in this agreement as intent have to exchange information with each other for criminal acts, the conditions in which the crimes were committed, planning of criminal acts, organized criminal groups and the knowledge gained from the activities of the competent authorities, in particular about new forms of crime.¹⁹ The competent authorities exchange requests for legal assistance and respond to them if they relate to the prevention of threats to public security and combating all types of crime. It is also important to mention that according to the agreement the parties make joint analysis and coordinate security and coordinate the operations of their respective territory.

The parties also agreed in specific forms of cooperation by establishing joint bodies, as joint teams of analysis and investigation, working groups and control and providing mutual advice. Another point which plays a very important role in the field of international police cooperation between these two countries is the possibility of reaching a specific agreement regarding the exchange of liaison officers for limited and unlimited periods. The purpose of liaison officers is to improve and accelerate cooperation and mutual assistance in criminal procedural matters. Mutual assistance of officials is another condition in the respective territory of the parties to be respected.

¹⁷ Ibid.

¹⁸ <http://www.mpb-ks.org>.

¹⁹ Article (7), of Agreement for police cooperation between Republic of Kosovo and Federal Council of Switzerland.

Another sphere which is very important also is the assistance in trainings and advanced training, seminars, exchanges of experts and training concepts. Data protection and data transmission to third parties under this agreement is in full compliance with national legislation and international obligations. Besides of police cooperation, will be cooperation between customs, financial intelligence units and the fight against cybercrime and other forms of criminality.

Looking into its entirety this agreement has created the legal basis and has opened the way for the continuation and further deepening of reciprocal police cooperation between the two countries. Also, it can serve as a template for Police cooperation with other countries and why not transform it into a basic framework on which in the future will be created and developed a common regional agenda in combating of all forms of international crime.

CONCLUSIONS

After the '90s of the last century with the collapse of the communist system, many states especially in Europe have embraced the values of democracy, free market and free movement of people and goods, and it requires cooperation and closer co-ordination between national forces law enforcement. States, in order to combat transnational crime, are obliged to make bilateral and multilateral international agreements in order to reach succeed. States with the signing of these treaties undertake to ensure that legislation, policies and internal practices to match and be harmonized with the treaty. Signature and adherence to international treaties by states has enabled that the law enforcement agencies, especially to the police in order to prepare for greater challenges in the common fight against negative international criminality. Arrest of criminal's so-called international ranking who deal with narcotics trafficking, human beings, weapons trafficking, prostitution, sexual abuse, cybercrimes; the other was made possible as a result of interstate cooperation.

It is a general conclusion that the social aspect, cultural and traditional has also been a factor partly important which has determined in the formulation of types of agreements between states. States also having similar language, legal tradition, and similar criminal problems have attempted to create lot of agreement which necessarily were inclined and influenced by good will and political climate between them. The Republic of Kosovo participates in international cooperation in the promotion of the protection of peace, security and human rights. State of Kosovo concluded international agreements which mean that in this direction Kosovo is interested and willing to be part of international agreements being aware that the international agreements contribute to the safety and resolve regional and international issues. Also Republic of Kosovo gives particular importance to the membership in international organizations, whether regional or global.

Certainly it is evident that for the state of Kosovo were raised a number of difficulties that the entire process in the field of international police cooperation but not only this area make it very difficult and sometimes almost impossible. For Kosovo there are still obstacles which currently are non-surmountable as e.g. membership in international police organizations related to security issues such as INTERPOL, EUROPOL, SECI, FRONTEX, etc. Membership in these international organizations is connected directly to the status of Kosovo in the United Nations Organization, or in EU, regional security organizations and other international mechanisms.

Transnational and asymmetric nature of contemporary challenges, risks and threats to security have contributed to the fact that security is inseparable, and as we said is always clear that no state is able that independently solve the complex problems of security and strengthening national security. Based on the aspect of combating of organized crime and international cooperation special importance has United Nations Convention against International Organized Crime (UNTOC) and its protocols. Also a special role has the United Nations Office on Drugs and Crime (UNODC), United Nations Convention against corruption, as well that regional for police cooperation. Conferences and main periodic Congresses on Crime Prevention and Criminal Justice are one of the main periodic conferences of United Nations that plays a major role in setting international standards and policymaking in crime prevention and criminal justice.

According to the international police cooperation, the Republic of Kosovo is more focused on bilateral agreement. Kosovo after declaring independence in 2008 has managed to sign a series of bilateral agreements in the field of international police cooperation and participate in many forums and regional security conference. Analyzing the matter of the agreements reached so far can be concluded that these agreements have created the legal basis and have open the way for the continuation and further deepening of mutual cooperation police. Kosovo has proved that it is very dedicated, has the will and professionalism through its security mechanisms to provide its contribution in the field of international police cooperation and become a member of all international organizations as a pre-condition for the development of security processes. Undoubtedly international treaty plays a key role in uniting the states toward common goals and multilateral cooperation as a promoter of a more sustainable global security.

REFERENCES

- Koenig, J., Daniel, & Das, K., Dilip. (2001) *International Police Cooperation: A world Perspective*.
- Hasani, Enver, & Cukalovic, Ivan. (2013) *Commentary of Constitution of Republic of Kosovo*. First Edition.
- Lemieux, F. (2010) *International Police Cooperation*. Emerging Issues: Theory and Practice. Italy-Albania: *Legal Instruments and Technics of fighting against transnational organized crime*, Edition Unicri, 2007.
- Southeast European Convention for police cooperation*, 2006.
- United Nation Convention Against Corruption*, 2003.
- Constitution of Republic of Kosovo*, 9 april 2008.
- Law nr. 04/1-31 of Republic of Kosovo, *for International Law Cooperation in Criminal Matters*.
- Agreement for police cooperation between Republic of Kosovo and Federal Council of Switzerland in combating crime*, 2013.
- United Nations Convention Against Transnational Organized Crime*, A/RES/55/25.
- UNODC, *Trafficking of Human Beings & Smuggling of Migrants, Manual for international cooperation*, 2010.
- United Nations Office for Drugs and Crime*, Available from World Wide Web: <http://www.unodc.org/>
<http://www.mpb-ks.org>
<http://www.punetebrendshme.gov.al/al/legjislacioni>.