
PARTICIPANT'S PAPER

MEASURES FOR SPEEDY AND EFFICIENT CRIMINAL TRIALS

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I. INTRODUCTION

Bringing offenders to justice properly and swiftly have been complicated by the speed with which goods, money and people move across international borders (hereinafter transnational crimes). In order to improve criminal justice systems and practices regarding investigation, prosecution, adjudication and enforcement properly in today's fast-paced global environment, countries must strengthen international cooperation in criminal justice.

When it comes to combating transnational crime, police cooperation has stolen the limelight and seems to be considered the only area where mutual assistance in criminal matters has been providing new answers. New specialized police units seem to be of great popularity between head governors. This study is concerned with measures for speedy and efficient criminal trials and also with solutions concerned with addressing lack of democratic skills and disrespect of fundamental rights. To care about fundamental rights and democracy is a role that should especially be played by public prosecutors. In SAVIGNY's words, public prosecutors are *the watchmen of the law*. In an attempt to shed some light on the role of the public prosecutors and to outline their possible role in the field of mutual assistance in criminal matters, this study scrutinizes the institutions of prosecution services in different jurisdictions and examines transnational criminality.

A discussion of any branch of the criminal process could consider a wide variety of practical, procedural or theoretical issues, but to discuss them all, although important, would be impossible in a short work such as this. The scope of this essay is restricted to the specific idea that public prosecutors could be playing an important role in the international arena. The main thesis of the dissertation grew from an increasing realization that although in some jurisdictions the prosecutor has been a significant figure behind some remarkable penal trends and protection of fundamental rights, he/she is thrown overboard when it comes to international judicial criminal cooperation. Nevertheless, the paper does not deal with the reasons of this situation. It calls our attention to the role increasingly played by prosecutors in administering criminal justice in their own jurisdictions and points out the lack of their presence in the international scenario. The recognition of the lack of such pivotal figures may, at least, pose some food for thought to those faced with steering international judicial cooperation in criminal matters in a consistent direction in forthcoming years.

A. The Importance of the Topic

With the flourishing of global criminality,¹ an international judicial response became increasingly necessary to provide security and accountability.² Governments have been seeking to solve the problem by intensifying international judicial criminal cooperation (hereinafter IJCC).³ However, such judicial cooperation may well be translated solely into international police cooperation, and we argue that the success to combat transnational crime depends not only on its prevention and detection but also rightly

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¹The United Nations and Crime Prevention, ISBN 92-1-130177-7, UN Publications and also, *Stop Crime — The United Nations vs. Transnational Crime*, at <<http://www.un.org/ecosocdev/geninfo/crime/dpi1644e.htm>>.

²MARTIN & ROMANO showed that it will require enormous effort to study these activities in all their economic, political, and cultural aspects, since they are not individual acts, but part of a *'highly complicated, well-organized system that functions very much like a modern international business corporation'*. MARTIN, J.M. and ROMANO, A.T. (1992) *Multinational Crime: Terrorism, Espionage, Drug & Arms Trafficking*. Studies in Crime, Law and Justice, v.9, Newbury Park: SAGE, pp.1-27.

on interrelationships between States to prosecute and punish international offenders. That is to say that the assumption of IJCC solemnly as synonymous with police cooperation may be assisting criminal law-breakers or 'Big Brother' agencies, exacerbating the problems of law enforcement, national and international order and civil liberties.⁴ The question of how the international community should respond to the threat of transnational crime, and whether that response would be effective, is therefore, critical.

B. Some Necessary Explanations

1. Global Village⁵

It has been repeated to exhaustion that with advances in technology and the ease of global travel, the world has become, in many ways, a global village.⁶ This has a dramatic impact on many aspects of life and society, and law enforcement is no exception.⁷ Whereas, the recent developments concerning the Internet have sped up the inclusion of a shrinking world, provoking economic and social changes, as well new criminal opportunities, in seeking to avoid confusion with other definitions in which globalization is applied, the expression 'global village' better translates our purposes.

2. Prosecutorial Services

For the purposes of clarity, public prosecutor (hereinafter PP) means any lawyer who is or has at any time been appointed by or on behalf of the State or other public authority to prosecute criminal offences or has been elected for that purpose and includes lawyers who have been retained by a prosecutor so appointed or elected to conduct or assist in the conduct of criminal prosecutions and also includes examining magistrates.⁸ Under these circumstances, prosecution service or public prosecution is used herein as a generic designation of the institutions that have the incumbency to prosecute on behalf of the State. These institutions are very different in each Nation-State and they modify along space and time throughout their existence.⁹ The expression Public Ministry will be employed only to stress those differences referring to prosecutorial services of inquisitorial origin, that have a strong tradition of public prosecution in contrast to others with a long tradition of private prosecution. These two groups have developed and changed over the years leading to, as we will try to elucidate, a convergence towards an independent public service with space for subsidiary private participation.¹⁰ The PS is a necessary element within the domestic criminal procedure to secure the impartiality of the judge and to avoid the eventual bias of the police. It plays an important role in the administration of

³Criminal procedure, more than any other discipline, resists harmonization because it is essentially linked to State sovereignty. Mutual Assistance in Criminal Matters is not a new subject, but the idea of international judicial co-operation has been seen as the natural solution to face the non-existence of an effective international criminal jurisdiction system and the increase of perpetration of international and transnational crimes.

⁴ *Vide* EDWARD SNOWDEN's recent revelations on US National Security Agency — NSA.

⁵The expression 'global village' was chosen instead of the fashionable expression 'globalization'. The latter has been defined in various forms and in manifold contexts, usually meaning the concrete connections among different locales but with a strong connotation of hierarchical bias as a consequence of the neo-liberal police translated in a language of power. On the other hand, global village has a very precise meaning, which was given by the Canadian author MARSHALL MCLUHAN. It deals with the theory of communication and has not much to do with political concepts or a hierarchical idea; on the contrary, the idea is one of co-ordination (interdependence). The expression was carved to synthesize the last changes in the world made by the technological developments in communications.

'Globalization is about power and control; about the reshaping of the world into one without borders ruled by a dictatorship of the world's most powerful central banks, commercial banks and multinational companies. It is an attempt to undo a century of social progress and to alter the distribution of income from inequitable to inhuman'. PAUL HELLYER (1997). Other interesting quotes on globalization:

<http://www.oneworld.org/guides/globalisation/globalisation_quotes.htm>.

⁶PROST, K. (1997). *Breaking Down the Barriers: International Co-operation in Combating Transnational Crime*. Paper presented at the Second Annual Conference and General Meeting of the IAP — IAP, held from 2 to 6 September 1997, in Ottawa, Canada.

⁷ *Ibidem*.

⁸In accordance to the definition of 'prosecutor' given by the International Association of Prosecutors — IAP's Constitution in its article 1.1., excluding the examining magistrate which we deem a hybrid figure that expresses confusion between judiciary power and PS, in opposition to the necessity of independence of these institutions.

⁹See heading number 3 below.

¹⁰As it is the case of Brazil with the *subsidiary criminal prosecution*, CF, art.5, LIX: *private prosecution against public offenses shall be admitted if public prosecution is not filed within the period established by law*.

justice.

3. Transnational Crime

Transnational crime is the problem focused upon in this work; thus it is crucial to scrutinize how it has been handled so far. Although one can classify international, transnational and multinational crimes, these expressions will be used interchangeably and in opposition to 'domestic crime.' As a consequence, 'transnational crime' refers to the criminality that operates in more than one country or, although it may happen within only one jurisdiction, it is of concern of the international community.¹¹ For this reason, transnational crime could be defined as an act that breaches the law beyond one Nation-State jurisdiction or as an offence that operates beyond the legal reach of one Nation-State alone. The expression 'cosmopolitan crime' would be etymologically proper but it sounds pedantic and commentators and high authorities around the world have already selected the expressions 'transnational', 'international' and 'organized crimes'.¹² Finally, for the purposes of this paper, we assume IJCC as a *conditio sine qua non* to combat international criminality by speeding up and making more efficient criminal trials.

II. JURISDICTION AND SOVEREIGNTY

Criminal procedure is, for sovereign nations, a matter of power. Nevertheless, the sprouting of global crime imposes upon governments the need to solve the problem of criminality that goes beyond the Nation-State jurisdiction. These are issues of public interest though the principle of state sovereignty impedes the proper response to watch over the general interests of society. Legal and judicial response to this internationalization of criminal activities has not yet reached a state of real and complete adequacy. Incrimination and sentencing remain a privilege of national sovereignty¹³ and jurisdiction is usually confined to criminal acts committed within the boundaries of a country.¹⁴

The prohibition to take the law into one's own hands is a conquest of modern criminal law and also a guarantee of the fundamental rights of citizens.¹⁵ The *jus puniendi* belongs to the State,¹⁶ which means that only the State is allowed and has the right to punish individuals.¹⁷ Not only the right to castigate, but also, and above all, the duty to punish criminal offenders.¹⁸ The State has the right and the duty to defend society from any person that threatens its tranquility and commits breaches of the social intercourse.¹⁹ Otherwise it would be a question of private retaliation.²⁰ When an offence is committed, the State suffers indirectly the lesion besides the injury suffered directly by the victim.²¹ The State is able to prosecute and punish individuals that committed what is considered an offence under its laws and within its jurisdiction.²² The *jus puniendi* is suitable for the State as an expression of its sovereignty.²³ To enforce this essential security role, each State has its own police, which are characterized by the monopoly of the use of force within its territory.²⁴ Therefore, to provide security for its citizens is a basic function of the State, usually visualized²⁵ as the police — although only the

¹¹ This includes cases such as General Pinochet, the atrocities held in former Yugoslavia and Rwanda; the attack to the twin towers; crimes laid down by the Rome Statute, etc.

¹² Compendium of United Nations Standards and Norms in Crime Prevention and Criminal Justice [hereinafter *Compendium*], New York: United Nations, p.32 ff., Also MARTIN & ROMANO, *op.cit.*, pp.1-27.

¹³ BOSSARD, A. (1988) *Interpol and Law Enforcement: Response to Transnational Crime*, 11 Police Studies, p.177.

¹⁴ *Ibidem*.

¹⁵ GRECCO FILHO, V. (1991) Manual de Processo Penal [Criminal Procedure Manual], São Paulo: Saraiva, p. 50.

¹⁶ FREDERICO MARQUES, J. (1997) Elementos de Direito Processual Penal [Elements of Criminal Procedure Law], Campinas: Bookseller, v.1, pp.23-24; MIRABETE, J.F. (1997) Processo Penal [Criminal Procedure], São Paulo: Atlas, pp. 23-25.

¹⁷ *Ibidem*; TOURINHO FILHO, F.C. (1989) Processo Penal, v.2, pp. 11-13 and GRECCO FILHO, *op.cit.*, p. 50.

¹⁸ ALMEIDA, C.M. (1973) Princípios Fundamentais do Processo Penal [Fundamental Principles of Criminal Procedure], São Paulo: RT, 86-87.

¹⁹ TOURINHO FILHO, *op.cit.*, p. 11.

²⁰ GRECCO FILHO, *op.cit.*, p. 51; FREDERICO MARQUES, *op.cit.*, pp.23-24; MIRABETE, *op.cit.*, pp. 23-25.

²¹ TOURINHO FILHO, *op.cit.*, p.11

²² *Ibidem*.

²³ This is not an unlimited right. It finds its limitation on the *pulla poena, nullum crimen sine praevia lege* principle.

²⁴ BAYLEY, D.H. (1985) Patterns of Policing: A Comparative International Analysis, New Brunswick: Rutgers UP, p. 7.

²⁵ JONES, T., (1995). Policing and Democracy in Netherlands. Police Studies Institute, p. 1.

State-Justice has the power to inflict the *sanction juris* —, and this may be the reason that international police cooperation had been taken as synonymous of international judicial criminal cooperation. Indeed, the police are the key public service in the modern state, performing ‘the quintessential function of government, namely, authoritative and forceful regulation’.²⁶ And because the police are the most visible representation of social authority, they have to have a unique relationship with the institutions of democracy and their legitimacy.²⁷

On the one hand, transnational criminality remains a domestic threat without domestic answers. On the other hand, transnational policing means policing beyond sovereign frontiers and it is, by definition,²⁸ impossible. If contemporary concepts are applied, the use of force and special powers are allowed exclusively within one State’s jurisdiction. Historically, the dual concepts of national sovereignty and exclusive State jurisdiction over criminal law matters have played a crucial role in the development of modern criminal justice systems.²⁹ In spite of all this, the most significant difference in many if not most of these new manifestations of transnational crime is really the ease with which they can avoid or circumvent national control efforts. They are perhaps invincible as long as individual States do not learn to work together.³⁰ Under those circumstances, the necessity of judicial criminal cooperation between jurisdictions involved in a transnational crime may be obvious.

III. PROSECUTION SERVICES AROUND THE WORLD

From the historical background one may conclude prosecutorial services around the world developed diffusely and in accordance with cultural patterns responding to historical trends. They are still developing and also being created heterogeneously. For this reason, and because PPs play a crucial role in the administration of criminal justice,³¹ the United Nations (UN), among the other forty-four Resolutions adopted at the Eighth Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana, Cuba, in 1990, adopted guidelines on the role of prosecutors.³² The standard-setting instruments fit three main categories: human rights in the administration of justice; model treaties on cooperation; and statements on crime prevention.³³ The *Guidelines*³⁴ are included in the first main category³⁵ and view the role of the prosecutors as crucial in furthering the principles of equality before the law, the presumption of innocence, and the right to a fair and public hearing by an independent and impartial tribunal.³⁶ Those selected as prosecutors must be individuals of integrity and ability, with appropriate qualifications and training.³⁷ Accordingly, the *Guidelines* address qualifications and training;³⁸ status and condition of service;³⁹ freedom of expression and association;⁴⁰ the role of prosecutors in criminal proceedings;⁴¹ the need for rules and regulations to guide the exercise of the discretionary functions of prosecutors;⁴² alternatives to prosecution;⁴³ relations with other government

²⁶ BAYLEY, *op.cit.*, p.20.

²⁷ JONES, T. (1995). *Policing and Democracy in Netherlands*. Police Studies Institute, p.1.

²⁸ BAYLEY, *op.cit.*, p20.

²⁹ TKACHUK, B. & DANDURAND, Y. (1998) *Recent International Efforts to Address Transnational Crime*, Paper presented at the *International Conference on Crime and Criminal Justice in a Borderless Era*, Ritsumeikan University, Kyoto, Japan, p.2.

³⁰ *Ibidem*.

³¹ Promoting fair, effective, impartial and efficient prosecution of criminal offences and the promotion of high standards and principles in the administration of criminal justice — Article 2.3 of IAP’s Constitution.

³² Report prepared by the Secretariat, UN Doc.A/CONF.144/28 (1990), at 188.

³³ CLARK, R.S. (1994). *The United Nations Crime Prevention and Criminal Justice Program: Formulation of Standards and Efforts at Their Implementation*, v.20, *Procedural Aspects of International Law Series*. University of Pennsylvania Press, Philadelphia. p.117.

³⁴ UN Doc.A/CONF.144/28 (1990).

³⁵ CLARK, *op.cit.*, p.117-118.

³⁶ Preamble of the Report. *Supra n.19*.

³⁷ Para. 1. *UN Guidelines*, in *Compendium*, p.165, ff. (*Supra n.15*).

³⁸ *Ibidem* para.1-2.

³⁹ *Ibidem* para.3-7.

⁴⁰ *Ibidem* para.8-9.

⁴¹ *Ibidem* para.10-16. For example, prosecutors must ‘[p]rotect the public interest, act with objectivity, take proper account of the position of the suspect and the victim, and pay attention to all relevant circumstances, irrespective of whether they are to the advantage or disadvantage of the suspect.’ [Para.13 (b)].

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agencies or institutions;⁴⁴ disciplinary proceedings;⁴⁵ and the obligation on the part of prosecutors to observe the guidelines⁴⁶ and to report violations to their superiors.⁴⁷

In the same direction, in June 1995 at the United Nations' offices in Vienna, the *International Association of Prosecutors (IAP)* was established,⁴⁸ being formally inaugurated in September 1996, at its first General Meeting in Budapest.⁴⁹ It is a young association that has already produced very good results. Its preoccupations with qualifications and training; conditions of service; freedom of expression; the role of prosecutors in criminal proceedings; and especially, regulations to guide the exercise of the discretionary functions of prosecutors, are expressed in its Constitution⁵⁰ and throughout its conferences⁵¹ and work,⁵² and reflects the *Guideline in the Role of the Prosecutors* and the UN Universal Declaration of Human Rights and other subsequent international instruments.

Although the idea of harmonizing and standardizing the role of the PP around the world may sound interesting, each national jurisdiction has a very particular PS. One may say they could be classified in as many prosecution families as there are PS around the globe; this is because of the different national constitutions and juridical systems; administration divisions; peculiarities of each criminal procedure; historical events; political, economic, social and cultural circumstances and traditions of each country.

Some countries are divided into states or provinces and have different criminal procedures and PS. For example, Australia has six states and two territories, each state has its own director of public prosecutions whose responsibility is for 'domestic' offences; for example the sale of drugs within that particular State.⁵³ There is, in addition, one Federal (Commonwealth) Director of Public Prosecutions, who has an Office in each State. The responsibility of the Commonwealth Director of Public Prosecutions is in relation to breaches of Federal law, for example, the importation of drugs into Australia.⁵⁴ Broadly speaking, one may say the same occurs with Brazil,⁵⁵ Canada,⁵⁶ Germany;⁵⁷ Switzerland;⁵⁸ the USA,⁵⁹ among others. However, in the Russian Federation the PPs constitute a unified federal centralized system of bodies and institutions and act on the basis of subordination of lower prosecutors to

⁴² *Ibidem* para.17.

⁴³ *Ibidem* para.18-19.

⁴⁴ *Ibidem* para.20.

⁴⁵ *Ibidem* para.21-22.

⁴⁶ *Ibidem* para.23.

⁴⁷ *Ibidem* para.24.

⁴⁸ It is important to note that police have had international associations for a long time.

⁴⁹ IAP (1998) *International Association of Prosecutors: an Introduction*. Internal publication of the IAP, p.2.

⁵⁰ Particularly in Article 2.3 of the Constitution of the IAP, Internal publication (1998), which establishes the objectives of the IAP.

⁵¹ After the inaugural Conference in Budapest in 1996, Annual Conferences were held in Toronto (1997); Dublin (1998) and the Fourth Annual Conference was held in Beijing (September 1999).

⁵² On 23 April 1999 the IAP adopted its *Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors* [hereinafter *Standards*]. It has also prepared the *Directory of Prosecution Services* [hereinafter *Directory*], in accordance with its Constitution, particularly Article 2.3 (*Supra* p.15).

⁵³ *Directory*, p.1.

⁵⁴ *Ibidem*.

⁵⁵ One Federal Prosecution Service and twenty-four state's PS. *Ibidem*, p.45.

⁵⁶ Canada functions under a Federal and Provincial system. There is an Attorney General of Canada at the Federal level and Attorneys General for each of the 10 Provinces. *Ibidem*, p.50.

⁵⁷ Within the *Länder*, the prosecutor's office is hierarchically organized from the 'prosecutor general', who acts directly under the authority of the minister. At the federal level there is the federal prosecutor's office competent only for cases of subversive activities (*Staatsschutzdelikte*, § 120, 142a GVG). *Ibidem*, p.101, and also VAN DEN VYNGAERT, VAN DEN WYNGAERT, C. (1993) *Criminal Procedures Systems in the European Community*, London: Butterworth & Co. (Publishers) Ltd., p.141.

⁵⁸ *Directory*, p.195. The Swiss criminal prosecution system is very complex. Switzerland consists of twenty-six constituent states or cantons, each having separate prosecution systems. Only a fraction of offences are subject to federal prosecution. Thus there are twenty-seven prosecuting systems differing to such an extent that any attempt to delineate the justice and prosecution system as a whole would deserve a unique dissertation.

⁵⁹ *Directory*, p. 206. Prosecuting agencies in the US exist at the local, state, and federal level, and prosecutors' duties, functions, and powers vary from jurisdiction to jurisdiction. America hosts no fewer than fifty-one distinct governments:

superior ones and the Prosecutor General of the Russian Federation.⁶⁰ The system of the Prosecutorial bodies is comprised of the Prosecutor General's Office, Prosecutor's Offices of republics, territories and regions, of Moscow and St. Petersburg (89), specialized prosecutor's offices (for transport and for protection of environment) (19), prosecutor's offices in cities and towns.⁶¹ The bodies of military prosecution headed by the Chief Military Prosecutor's Office are also included in the system and the Chief Military Prosecutor's Office is regarded as part of the Prosecutor General's Office.⁶²

Other peculiarities, for instance the way in which the prosecutors are chosen for the job, can also be the core of a study. They can be elected, appointed, nominated or selected on the basis of exams.⁶³ The division of work also makes distinctions between prosecution bodies. In England and Wales there are bodies other than the Crown Prosecution Service (CPS) in charge of prosecutions of crimes (Serious Fraud Office (SFO);⁶⁴ HM Customs and Excise;⁶⁵ and other Government departments).⁶⁶ In France, administrative authorities may, within their own sphere of competence, initiate criminal proceedings. Examples are the Water Supplies and Forests, the Customs Service, Posts and Telecommunications.⁶⁷ These agencies may act alone or in conjunction with the PP in accordance with complex rules which are to a certain extent the product of history.⁶⁸ On the other hand, there are countries where the PS is an exclusively legitimate body to prosecute a criminal offender.

The quantity of citizens under a certain jurisdiction or the ratio between the number of prosecutors and the number of citizens and its contrast with other jurisdictions can also be a relevant form of study and help to improve PS work. There is an almost infinite variety of forms one could classify the PS existent around the world and as a consequence one may conclude: It is impossible to establish a standard model of PS. Nevertheless, better understanding among different prosecutorial services and different criminal procedure systems around the world can be reached if minimum standards of prosecution are respected.

A. Relationship between Prosecution Services and the Local Government

States shall ensure that prosecutors are able to perform their professional functions without intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, penal or other liability.⁶⁹ The use of prosecutorial discretion,⁷⁰ when permitted in a particular jurisdiction, should be exercised independently and be free from political interference.⁷¹

If non-prosecutorial authorities have the right to give general or specific instructions to prosecutors, such instructions should be transparent; consistent with lawful authority and subject to established guidelines to safeguard the actuality and the perception of prosecutorial independence.⁷² When it comes to international relations such authorities have an enormous influence. In order to ensure that prosecutors are able to carry out their professional responsibilities independently, in article 6 of the IAP's *Standards*, a set of measures deals with the PP's empowerment, ranging from professional functions⁷³

the national or federal government, and the governments of each of the fifty states. Recognized as distinct sovereigns, each state has the power to establish its own government, to pass its own laws, and to regulate matters of local concern within its territorial limits. The American system represents an adaptation of the English Common Law to America's special needs. While the towns, cities, counties, states, and nation all have their own criminal justice systems, all of them operate somewhat alike. No two of them, however, operate precisely alike.

⁶⁰ Directory, p.176.

⁶¹ *Ibidem*.

⁶² *Ibidem*.

⁶³ The selection criteria for prosecutors shall embody safeguards against appointments based on partiality or prejudice, excluding any discrimination. UN's Guidelines, para.2 (a).

⁶⁴ *Ibidem*, p.88.

⁶⁵ *Ibidem*, p.83.

⁶⁶ *Supra* n.129.

⁶⁷ VAN DEN WYNGAERT, *op.cit.*, p.112.

⁶⁸ *Ibidem*.

⁶⁹ UN's Guidelines para. 4.

⁷⁰ Prosecutorial discretion is an important issue that has gained commentators' attention.

⁷¹ *Standards*, para.2.1, see also para.6.

⁷² *Ibidem*, para. 2.2.

⁷³ Article 6(a).

to personal and family physical protection, when their safety is threatened as a result of the proper discharge of their prosecutorial functions.⁷⁴

Independence from the local government is a variable that may give the idea of democratic and non-democratic governments according to the greater or lesser control the executive authorities exercise over PS. Although, many Western democracies are in the group of partially dependent or even in the dependent group. It seems it happens by tradition and to enforce accountability; however it is said this control is not used to interfere with the administration of justice. Nevertheless, it gives the executive power some control over PS.

From a brief study of the Directory of Prosecution Services one may conclude that even PS in Western democracies still lack more independence from local governments. Eastern European countries present almost the same percentage of independent, partially independent and totally dependent countries, maybe because of the reforms and their efforts to integrate within the EU in the future.

Figure 1

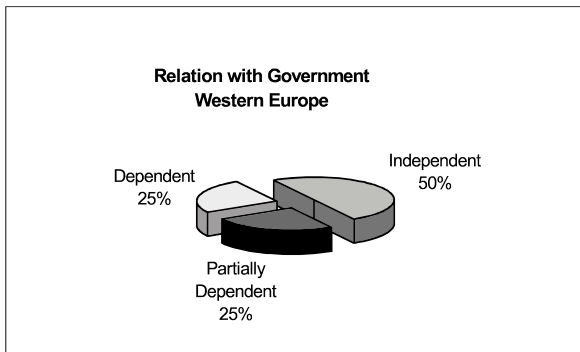
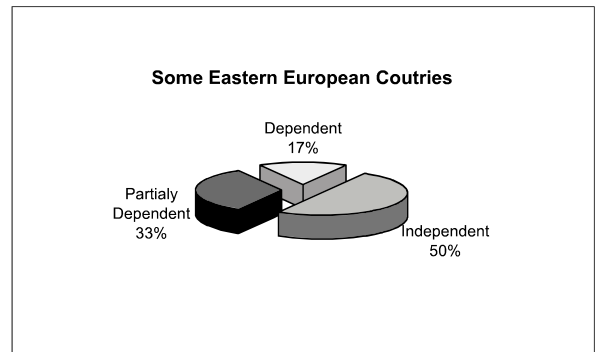


Figure 2



While in American countries the PS are more independent from local governments, and Nordic countries consider this independence fundamental, in Far-East countries the tradition is of dependency.

Figure 3

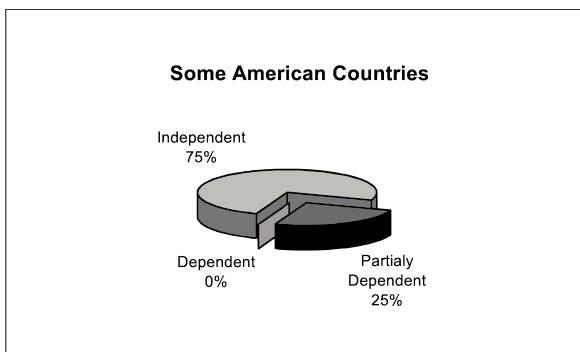
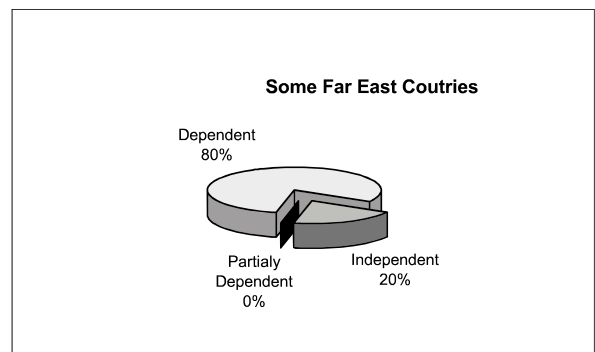


Figure 4



Since the few African countries analysed do not present a tendency for the continent, a balance is reached and the total of PS studied reflected the same ratio as Western Europe: Half of the countries with PS independent from local government and the other half divided by dependent and partially independent relations (figs. 5 and 6).

⁷⁴ Article 6(i).

Figure 5

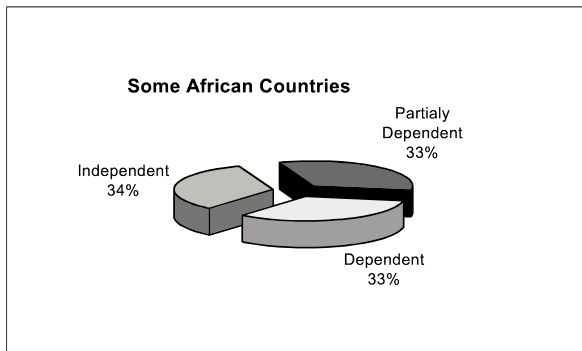
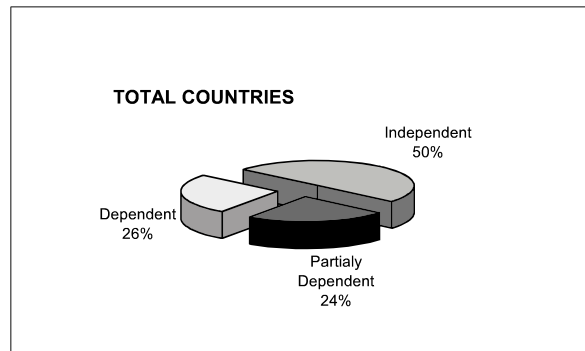


Figure 6



Other relations must be established in order to study the authorities responsible for implementing international mutual assistance in criminal matters.

B. The Role of the Prosecutor in the Investigative Process

The prosecutorial role in the investigative process is very controversial. Nevertheless, the *UN Guidelines* recognize that the office of prosecutors shall be strictly separated from judicial functions⁷⁵ and prosecutors shall perform an active role in criminal proceedings, including institution of prosecution and, where authorized by law or consistent with local practice, in the investigation of crime,⁷⁶ supervision over the legality of these investigations and the exercise of other functions as representatives of the public interest.⁷⁷

In spite of the existence of those who argue in favour of total independence between prosecutorial services and the police,⁷⁸ from the study it seems that this pure independence does not exist. The police work will be addressed to the PS and even being independent they are interdependent.⁷⁹ For instance, the CPS has no control over the internal management of the police,⁸⁰ nor over the way in which its functions are performed. Nevertheless, cooperation between the police and the CPS is crucial to the effective working of the criminal justice system, and a number of structural links have been developed, including joint training and performance management programmes⁸¹ and even CPS lawyers in police stations in an advisory capacity.⁸² The CPS has the statutory duty to advise the police on the relevance, weight and admissibility of the evidence gathered.⁸³ They cannot compel the police to follow advice; however, once advised, the responsibility for any flaw will end up with the police. It is interesting to note that in other agencies like HM Customs and Excise and the SFO, lawyers play a different role in the investigation of a crime. The first operates in a task force model: a tripartite structure deciding whether the case should be prosecuted.⁸⁴ The second carries out investigations and each investigation is under the control of an SFO lawyer, who may give advice and instructions to the police.⁸⁵ Thus, when it is not of primary public interest, but of secondary public interest,⁸⁶ or when it is related to so-called

⁷⁵ Guidelines, para.10.

⁷⁶ *Ibidem*, para.11.

⁷⁷ *Ibidem*.

⁷⁸ The Royal Commission on Criminal Procedure and also by the JUSTICE Report, pointed it out: the decision to prosecute should rely on a distinct body other than the police (*It is difficult for investigators to achieve the necessary detachment and unfair to expect them to do so*). In contrast to the idea of total independence, both reports mention the Northern Ireland's Procurator Fiscal as example to be adopted.

⁷⁹ Directory, p.74.

⁸⁰ In some countries there is explicit external control, for example in Brazil, CF, art.129, VII, it is the duty of the prosecutor *to exercise external control over police activities, according to the supplemental law*.

⁸¹ *Ibidem*.

⁸² BALDWIN, J. & HUNT, A. (1998) *Prosecutors Advising in Police Stations*, *Criminal Law Review*, pp.521-36.

⁸³ Directory, p.74.

⁸⁴ *Ibidem*, p.84.

⁸⁵ *Ibidem*, p.88.

⁸⁶ MAZZILLI, H. N. (1996). *Regime Jurídico do Ministério Público [Juridical Regime of the Public Ministry]*. São Paulo: Saraiva, p.30, for the distinction.

serious crimes,⁸⁷ the role of prosecutors in the investigative process changes. In the same way, it can be argued that to combat transnational criminality, prosecutors should have at least supervisory powers of investigation.

However, under those circumstances, the classification used in this study does not have a group of total independence — there is no such case of PS playing no role in the investigative process. The task force group was also excluded from the classification. It is a way of investigating born in the USA (see below), which creates one *équipe* for a specific task, sometimes including a prosecutor at its fulcrum, but it has a hierarchical structure that does not fit international cooperation. From the study, one may conclude that very few PS have an advisory role. In Western democracies the PS are practically divided into two roles, investigative and supervisory. The high number of PS with investigative power is a direct consequence of the quantity of inquisitorial systems in Western Europe. The Nordic countries are all supervisory. Eastern European countries present the same tendency (most of them were influenced by France's system).

Figure 7

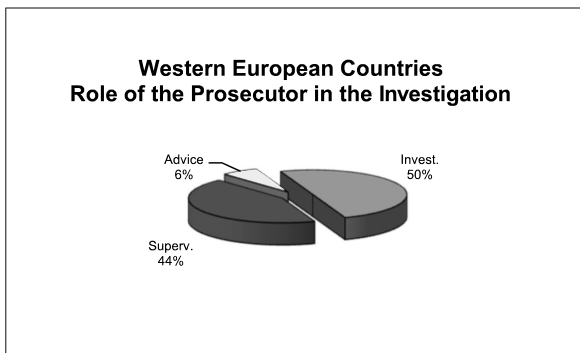
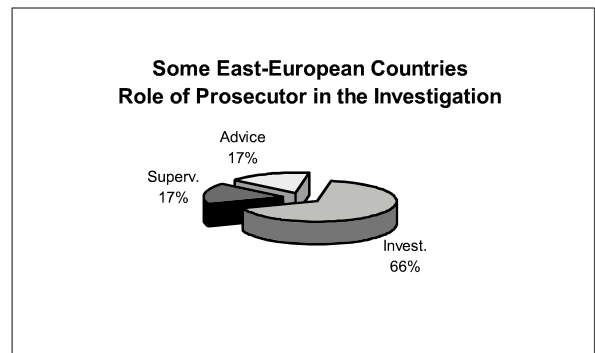


Figure 8



The same can be said in relation to Far East countries; some countries were not only influenced by France but also by Germany.⁸⁸ In American countries, the PS are more supervisory of the investigative process, even though these countries are equally divided between inquisitorial and accusatorial backgrounds.

Figure 9

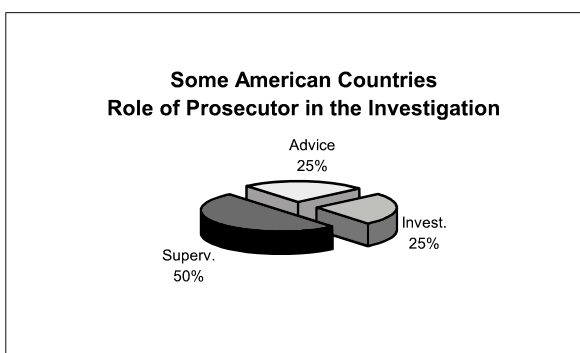


Figure 10



In America (fig 9) and Africa (fig. 11), it seems the supervisory role of PS is preferred, excepting South Africa and Canada. Actually, the British ex-colonial countries are the ones that keep the group of advice alive. The most recent countries seem to adopt the supervisory role of the PS in relation to the investigative process.

⁸⁷ As if not all the crimes were serious.

⁸⁸ IIZUKA, K. (1996) *The Criminal Justice System in Japan: Prosecution*, Conference Paper, HEUNI, p.3. *The code of Criminal Procedure, under the Meiji Constitution, was enacted in 1890 under both French and German influence.*

Eastern Europe (fig. 8) and the Far East (fig. 10) are the places where PS have more power in the investigative process. The total global result reflects a division between investigative and supervisory roles.

Figure 11

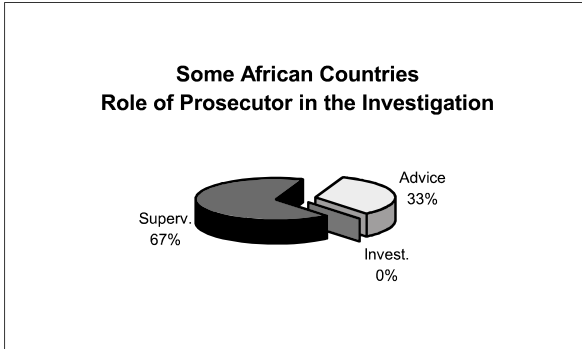
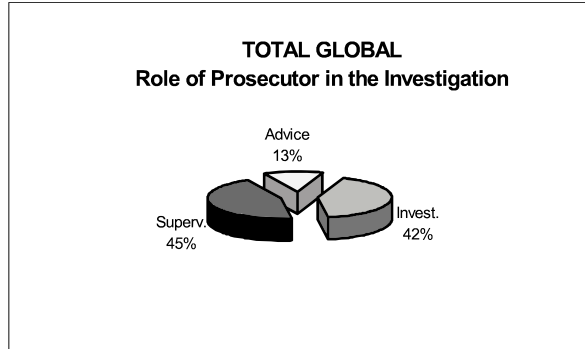


Figure 12



An independent PS with some investigative powers is a tendency⁸⁹ which is reflected in the International Criminal Court (ICC),⁹⁰ and in the PS of the International Criminal Tribunals for the Former Yugoslavia⁹¹ and Rwanda.⁹² It has the power to initiate investigations of any crime which took place within the tribunals’ jurisdiction on his or her initiative, and present indictments to the tribunals for approval, without any selection or prior interference by the Security Council or States; however, States are free to seek judicial review of court orders. Nevertheless, it is provided by the Rome Statute that an investigation or prosecution may stop or not begin for twelve months if the Security Council, in resolution adopted under Chapter VII of the Charter of the UN, requests the Court to that effect,⁹³ notwithstanding there should not be legitimate grounds to obstruct justice.

C. Positional Value Argument

Penal prosecution starts with the investigation of a fact — a criminal fact — and ends with the judicial power’s final decision. It includes not only trial but also pre-trial stages. The connection of these two phases is made by the PP, and in some jurisdictions he/she will still have an important role supervising the application of the sanction.⁹⁴ This strategic position of PS is true in any criminal procedure system. Common law criminal procedure and evidence is often criticized on the ground that it does not set out to discover the truth.⁹⁵ Instead it arranges a contest between the prosecution and the defence in which the judge acts like an umpire.⁹⁶ In inquisitorial systems the judge appears to be trying to get at the truth whereas, in common law systems he remains aloof from the contest, seeing that the rules are kept and summing up the evidence impartially to the jury who make the decision.⁹⁷ It is said that, “it is true that procedure does not set out to discover whether the defendant ‘did it’ but whether it is proved beyond reasonable doubt he did it.”⁹⁸ Therefore, criminal prosecution is about reconstructing the facts to discover the truth — inquisitorial systems — or just to prove the defendant should be held accountable for them (he ‘did it’) — common law systems.

Focusing on reconstructing the criminal facts, one may think about representation or language *lato*

⁸⁹ International community and ONGs, including the Human Rights Organizations, such as International Amnesty, Human Rights Watch, claim for an independent PS working in these Tribunals.

⁹⁰ Rome Statute, 17 July 1998, Doc.A/CONF.183/9 establishes the ICC, available at <<http://www.un.org/icc>>. Article 15. “The prosecutor may initiate investigations *proprio motu* on the basis of information on crimes within the jurisdiction of the Court. See also Article 53.

⁹¹ ICT for Crimes committed in Former Yugoslavia, <<http://www.un.org/icty/>>.

⁹² ICT of Rwanda, <<http://www.un.org/icty/>> and <<http://icc.amnesty.it/en/icc/crimes/ruanda.html>>.

⁹³ Article 16, Rome Statute.

⁹⁴ Most Romano-Germanic criminal systems.

⁹⁵ SMITH, J. (1995) *Criminal Evidence*, London: Sweet & Maxwell, p.1-2.

⁹⁶ *Ibidem*.

⁹⁷ *Ibidem*.

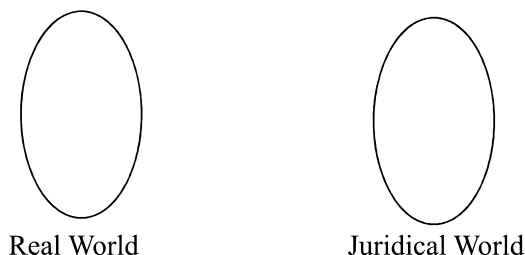
⁹⁸ *Ibidem*.

sensu.⁹⁹

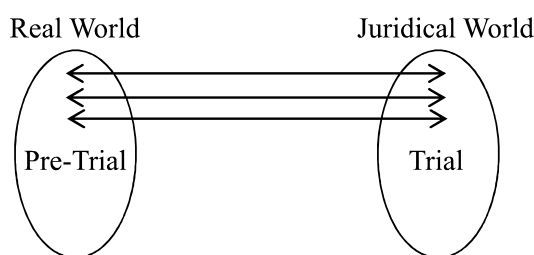
'Each law in fact constitutes a system: it has a vocabulary used to express concepts; its rules are arranged into categories, it has techniques for expressing rules and interpreting them, it is linked to a view of the social order itself which determines the way in which the law is applied and shapes the very function of law in that society.'¹⁰⁰

DAVID and BRIERLEY's statement is equivalent to saying each law in fact constitutes a 'language'. If one interprets the application of law to a concrete case as an exercise of language representation,¹⁰¹ it will be easy to understand that the pre-trial phase of the penal prosecution works within the real world gathering evidence and preparing the 'language elements' to represent the criminal occurrence before a competent judicial authority. This moment of representation — the trial — has its own rules, which integrate the language chosen to represent the real event in the juridical world.

This appropriate (competent) representation is necessary and, as in any language, has to follow all the rules and formalities to be authoritative. It is not enough if the facts were represented in other language, in the TV or cinema for instance. It does not matter how close to reality they represent the criminal event; there will be no legal output. Thus, in the juridical world the rules are clear and lawyers, judges, commentators, prosecutors, scholars, etc. have to use the juridical language elements and relations correctly.¹⁰²



If one represents these two worlds in mathematical sets, the elements (pieces of evidence) in the real world set will have to be represented in the other set by a bi-univocal function. That is where the PP works. He is the bridge, or the function, between the real world and its legal representation. If someone makes up evidence this bi-univocal representation is broken. The same occurs if for any reason the jury or judge misinterpret the representation or if the PP does not establish a bi-univocal function.



⁹⁹ One can interpret law (*droit*) as a language taking into consideration the Semiotic as Charles Sanders Peirce developed in his *Collected Papers*

¹⁰⁰ DAVID, R. & BRIERLEY, J.E.C. (1985) *Major Legal Systems in the World Today: An Introduction to the Comparative Study of Law*. London: Stevens, p.19.

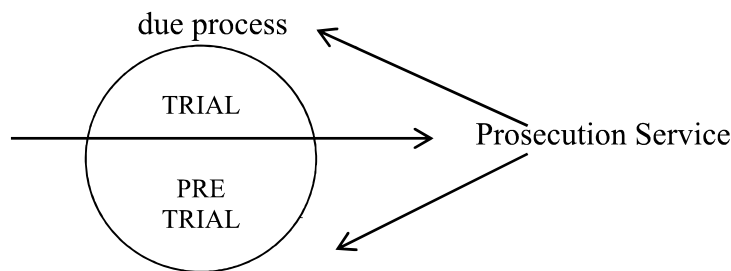
¹⁰¹ PEIRCE, C.S. (probably composed early in 1894) *What Is a Sign?*, transcribed at <http://www.iupui.edu/~peirce/web/ep/ep2/ep2book/ch02/ep2ch2.htm>. *There are three kinds of interest we may take in a thing. First, we may have a primary interest in it for itself. Second, we may have a secondary interest in it, on account of its reactions with other things. Third, we may have a mediatory interest in it, in so far as it conveys to a mind an idea about a thing. In so far as it does this, it is a sign, or representation.* (our emphasis).

¹⁰² This real world in opposition to a juridical world is a different concept than that one employed by HANS KELSEN [IS/UGHT] in his *Pure Theory of Law* and also his *General Theory of Norms*. Here it is just about language theories and interpretation, while there he was stipulating the function of law (the world of how things ought to be).

It is not at all wrong to say that the pre-trial phase closely relates to the first set and that the trial itself is related to the second one. PS, excepting some few jurisdictions, play primary roles in both sets, obviously because they are the ‘function’ or ‘bridge-institution’. One may say prosecutors have a twofold duty just because of their position in criminal procedure systems, and that is where their pivotal role lies.

Adopting PACKER’s theory,¹⁰³ one may say that the pre-trial phase, among many jurisdictions, is characterized by crime-control, while trial is characterized by due process. Romano-Germanic law systems of criminal procedure have traditionally given greater authority to the State with much emphasis put on crime control.¹⁰⁴ On the other hand, common law systems of criminal procedure with their inherent distrust of the State are said to be more congruous with the concept of liberal democracy,¹⁰⁵ or due process. It is known that some Romano-Germanic criminal systems have recently been through reforms.¹⁰⁶ Those reforms mainly improved criminal procedure adopting and strengthening due process principles, basically in the trial phase, seeking to give a fast response and to decrease the backlog of files. For this reason, many believed that inquisitorial procedure countries were moving towards common law criminal systems. In contrast, countries like England were trying to ameliorate their criminal system creating instruments like the CPS,¹⁰⁷ and increasing the crime-control component of the criminal persecution improving the pre-trial phase’s problematic side.¹⁰⁸

One may say the characteristic of a good criminal procedure system is a trial based on due process and a pre-trial substructure on crime-control.¹⁰⁹ At least this is the contemporary tendency and has been adopted by the Rome Statute.¹¹⁰



Since the infliction of punishment affects ‘the most precious possession of every citizen, the right to freedom, which is the essence of humanity,’¹¹¹ the PS have to balance between the States’ responsibility to control crime and their obligation to protect civil liberties.¹¹² It is hard to state if this incumbency is a reflection of the PS position on criminal procedure systems or, alternatively, the positional value of the PPs in criminal procedure is the result of their twofold attribution — responsibility to control crime and obligation to protect civil liberties. What is certain is that this twofold mission is entitled to prosecutors and their positional value is a strong argument to increase PS presence in IJCC.

D. Final Remarks

At first it seemed important to undertake the transnational criminality problem establishing a basic pattern of prosecutorial service to enable the cooperative work between PS of different jurisdictions.

¹⁰³ PACKER, H.L. (1968) *The Limits of the Criminal Sanction*, Stanford: Stanford University Press, pp.149-173.
¹⁰⁴ FASSLER, L.J. (1991) *The Italian Penal Procedure Code: an Adversarial System of Criminal Procedure in Continental Europe*, 29 *Columbia Journal of Transnational Law*, pp.245-278.
¹⁰⁵ *Ibidem*.
¹⁰⁶ *Supra* n.73-76.
¹⁰⁷ *Supra* n.59-71.
¹⁰⁸ FIONDA, J. (1995) *Public Prosecutors and Discretion: A Comparative Study*, Oxford: Clarendon Press, p. 8.
¹⁰⁹ PACKER’S analysis is heavily in favour of the American system and he compares a procedural method (due process) with an objective (crime control).
¹¹⁰ Rome Statute, Articles 53-61 (pre-trial, investigation, prosecution and the pre-trial Chamber functions and power) and also Articles 62-76 (The Trial, principles and rights of the accused), <<http://www.un.org/icc>>.
¹¹¹ FASSLER, *op.cit.*, pp.257-8.
¹¹² *Ibidem*.

However, the concern that different structures of PS were responsible for the lack of international cooperation and the absence of interest in them was turned down after this attempt of establishing a blueprint of a basic prosecutorial structure.

As this work developed, it became clear it was not important, not even relevant, to have a pattern structure of PS. When there is cooperation between two or more individuals to realize a task, it is not necessary for these individuals to have the same genetic pattern and cultural formation. Even the word 'cooperation' implies heterogeneity of participants. What is necessary is the same goal and will to translate thoughts into action. Accordingly, it is not necessary to have the same structure of PS around the world to enable their role in IJCC. As one might expect, once their pivotal role is understood, the importance of PS for international criminal law enforcement is to ensure fundamental rights and due process.

Therefore, although it is unfeasible to draw a pattern of prosecutorial structure establishing basic powers and attributions of prosecutors around the world, it is not impossible to have all the PS working under a minimum standard of professional responsibility¹¹³ and pursuing the same goal of combating transnational criminality.

IV. CORPUS JURIS

The *Corpus Juris* (CJ)¹¹⁴ is one of the latest attempts to protect the financial interests of the EU under criminal law. It is a body of criminal provisions consisting of thirty-five articles, divided into two parts. The first part consists of criminal law (art. 1 to 17). It defines crimes of fraud against the EU budget and lays down penalties. The second part consists of criminal procedure (art. 18 to 35). It establishes the new European Public Prosecutor (EPP), investigations, committals, prosecutions, pre-trials, trials and execution of the sentences.

Without entering into a discussion of its pros and cons,¹¹⁵ and despite all the arguments CJ has caused, two important initiatives have to be mentioned. The first is the radical proposal of article 18(1), which provides that 'for the purposes of investigation, prosecution, trial and execution of sentences concerning the newly created European budgetary crimes (articles 1 to 17), the territory of the Member-States of the Union shall constitute a single legal area' (our emphasis). The second important point is the emphasis given to the created EPP in the exclusive international assignment to combat fraud within the EU.

For the very first time the myth of the dual concept of national sovereignty and exclusive State jurisdiction is broken with the idea of creating a common area among territories of different Nation-States concerning a specific type of criminality. Anyhow, despite the fact that it has been created only with regards to protecting financial interests of the EU, it is groundbreaking,¹¹⁶ and it is not a hidden agenda since it has been conceived as 'the embryo of a future European Criminal Code'.¹¹⁷ On the other hand, the emphasis given to the role of the EPP signals the very crucial role PPs could be playing in IJCC. The EPP will be present in every Member-State — the Director (EDPP) in Brussels and delegates (EdelPP) elsewhere — and he or she will decide whether or not to prosecute and where a person should stand trial. However, it is still the national judge who has the power to convict or to release the accused.

National justices are still competent to judge offenders, since this is the way to bring justice, simplicity and efficiency, as it is said in the explanatory memorandum. One may note that basically a list of crimes under a delimited territorial space and a pivotal institution to deal with them are introducing this unification. The criminal justice of each Member-State remains untouched in a sense

¹¹³ Step already taken by the IAP adopting the *Standards*. *Supra* n.183.

¹¹⁴ For information about *Corpus Juris* in English <<http://www.eurocep.dircon.co.uk/corpus.htm>>.

¹¹⁵ The Resolution on the *Corpus Juris* was debated in the European Parliament on 12 April 1999. The motion to adopt it received the overwhelming majority of 399 in favour, 48 against and 35 abstentions.

¹¹⁶ For instance, extradition process for European budgetary crimes becomes history among EU Member-States.

¹¹⁷ Stated in San Sebastian Seminar, Spain, April 1997, when it was first presented by the European Commission to a specially invited audience, as one of the two core objectives of the *Corpus Juris*. *Supra* n.408.

that they do not lose the competence to judge those crimes.

The CJ was trying to strike a balance between inquisitorial systems — where investigation is carried out by the *juge d'instruction* — and accusatorial systems — which entrust most powers of investigation to the police. However, it can be said it ended up with a system which is basically inquisitorial in the totality of its provisions.¹¹⁸ This has resulted in great opposition from British scholars, which will not be discussed here.¹¹⁹ Nevertheless, the problem with the CJ seems to be the centralization of the procedure on the EPP rather than the emphasis on one criminal system or on another. The PP in Brussels gives orders and delegates cases. It is understandable that fraud can do a lot of damage to the EU, not only financial but also in terms of its credibility. Nevertheless, it does not justify the centralization of the system. A European tendency that confronts the tradition of criminal law and criminal justice as symbols of State sovereignty that is not going to change overnight, and this is the real reason for the strong criticisms. However, it is possible that without such centralization, the twofold solution of a 'single legal area' and the pivotal role of PS would overcome the resistance based on the notion of State sovereignty.

According to DAMASKA¹²⁰ the nature of the criminal procedure is related to the institution that carries it out. By emphasizing prosecution, the new system is placed in between the accusatorial and inquisitorial models — no *juge d'instruction* and no unrestricted powers of investigation to the police with a passive PS. Both the role of supervision of the investigation¹²¹ and the independence of the PS from national authorities and community institutions, embody an attempt to design a template institution to act at an international level, which is a contribution of extreme importance made by this 'body of rules' to the improvement of IJCC.

One may argue that the UN could do the same, for instance, recognize and define a list of transnational crimes and consider the territories of the Member-States as a single legal area for purposes of investigation, prosecution and trial of such crimes; and also designate UN PPs in each Member-State to deal with this set of crimes. These 'UN PS Offices' could be staffed with career PPs of the Member-States under a uniform international standard of professional responsibility, duties and powers.¹²² However, national judges would have the power to convict or to release the accused; and prosecutors would work in strait relations with their pairs from abroad coordinating investigations in their own country and exchanging requests and information (letters rogatory) directly without bureaucratic hindrances, yet ensuring the evidence is gathered legally and is acceptable for trial.

This outcome is a consequence of the position PPs occupy in every criminal justice system around the world. Their attributions and powers may change from country to country as demonstrated before; however, the duty to balance a State's responsibility to control crime and its obligation to protect human rights and civil liberties remains immutable, making PS a pivotal institution also for IJCC.

Therefore, IJCC could be dealt with in offices of national prosecution in each country, even if they needed to be under the supervision of the Foreign Affairs Ministry or the Justice Ministry as a consequence of internal rules of each county, which usually mitigates the desirable independence from local government. An embryo of this already happens informally in the majority of transnational cases in England without any written provision. None of the integrands of the National Crime Squad (NCS) have an obligation to contact a crown prosecutor until a suspect has been charged. However, an NCS senior investigator will usually contact the prosecutor at the local CPS office at an early stage in the investigation because it is helpful afterwards when the police want a *commission rogatoire* issued for evidence from abroad.¹²³ Upon Section 3(3) Criminal Justice (International Co-operation) Act 1990,

¹¹⁸ WHITE, S. (1998) *Protection of the Financial Interests of the European Communities: The Fight against Fraud and Corruption*, The Hague: Kluwer Law International, pp.182-183.

¹¹⁹ For criticisms: Torquil Dick-Ericson. <<http://www.keele.ac.uk./socs/ks40/torq1.htm>>.

¹²⁰ DAMASKA, M. (1975) *Structures of Authority and Comparative Criminal Procedure*, 84 *Yale Law Journal*, pp.480-544.

¹²¹ Tendency pointed out above.

¹²² Assignment already initiated by the IAP with the adoption of the *Standards*.

¹²³ HARFIELD, C. (1999) *These Foreign Laws Issues Facing UK Investigators when Gathering Evidence of Criminality from European Jurisdictions*, (unpublished LLM Dissertation, University of Sussex), Chapters 4 and 5.

crown prosecutors and customs solicitors can issue letters rogatory on behalf of investigators. They are sent via CPS Head Quarters (Casework Directorate) direct to the requested country. In very rare cases a prosecutor may even travel abroad to advise foreign authorities on how evidence should be gathered on behalf of the UK Police.¹²⁴

Transnational crime should be treated as such, with the prefix 'trans' in front of the measures taken to combat it. That is to say the territory of the involved countries should be considered as a single legal area for criminal justice purposes when dealing with transnational criminality. The communication system is another element that has to be employed in the same ways transnational offenders do so, with the most recent information technology and with contact made directly from one PS office to another. The malleability PP have between the two extremes of criminal procedure — judge on one end and the police on the other — and their duty to fight crime preserving human rights, shows that PS are the epitome of this assignment.

V. CONCLUSION

The argument of this work is very simple. PS play a pivotal role in domestic criminal procedures; they should also have a primary role in IJCC to speed up trial and combat transnational criminality. The idea to consider the role they might play to improve IJCC grew when we noticed not only that they had no relevant participation, but also that IJCC was being taken as synonymous for police cooperation. When it comes to combating transnational crime, police cooperation has stolen the limelight and it seems to have been the focus of the improvement of mutual assistance in criminal matters in recent years. Rather than research the reasons for this lack of participation, we verified that PS have a significant role to play internationally.

Just as any legal enterprise, transnational criminal groups take advantage of the opportunities provided by technological advances and the process of deregulation of transnational exchanges to enable greater freedom of movement of goods, persons and information. They are basically not new crimes, but they gained mammoth economic and political relevance as a consequence of the factors mentioned above.

Transnational expansion of organized and systematic crime requires a corresponding expansion of transnational law, law enforcement, and criminal justice. At first, the heterogeneity of PS seemed to be the problem for the absence of PS in the IJCC. Although an analysis of PS all over the world suggests heterogeneity, we conclude it is neither important nor relevant to establish a pattern structure of PS. We believe that this heterogeneity enriches international cooperation through the exchange of ideas, institutions, and good policies. Nevertheless, a minimum standard of conduct seems necessary.

Despite the logical simplicity of this statement, one must recognize the grave difficulties in harmonization. Differences in legal tradition, particularly differences in the structure of national criminal legal systems — sovereignty — make the process of harmonizing laws, requested by multilateral and bilateral agreements, difficult at best. Moreover, cultural differences are deep, particularly because they are related to human rights and the effectiveness of criminal sanctions. Finally, differences in the organizational patterns of law enforcement and justice also make transnational cooperation tricky since the interactions between the different actors of the criminal justice system vary from one country to another. Thus, Ministers of Justice, Ministers of the Interior, and directors of Prosecutor General Offices all have different roles to play with varying amounts of authority in different countries. All of these differences and others present obstacles to effective action against transnational criminals.

Criminal justice is a very delicate sphere of national government since it is concerned directly with the freedom of individuals and the maintenance of social order, and it should be recognized that Nation-States are reluctant to surrender their prerogatives in this area to the international community since this is tantamount to an abandonment of sovereignty. Nevertheless, some progress must be recognized. Multilateral and bilateral agreements have been creating a normative framework of IJCC, and national legislation to the agreements reached at these conventions is being enacted. This has been

¹²⁴ *Ibidem*.

a firm basis for IJCC. Governments have intensified international judicial criminal cooperation, although such judicial cooperation may well be translated solely in international police cooperation, especially under the influence of the USA's policy to combat transnational crime. In particular, to combat transnational crime is not only a matter of its detection and prevention, but also of the interrelationship between States to prosecute and punish international offenders. Because of this, we think it is possible and also necessary to press these international cooperative efforts further.

Some countries adopted and intensified new forms of investigation techniques, maybe because the basic function of the State — to provide security — is visualized by the general public as the responsibility of the police. On the other hand, the end of the Cold War and subsequent refocusing of intelligence away from the Soviet Union upon the 'new' threat to national security — transnational crime/terrorism — aroused questionable responses to combat such criminality. To contain the threat to human rights and civil liberties imposed by these 'new' investigative techniques, it seems, once more, that the presence of PS in IJCC will be important.

On the one hand, the introduction of new or more effective legislation to combat transnational crime, corruption, money laundering, special techniques of investigation, asset seizure confiscation measures, etc., strengthened the fight against transnational crime, but seemed not to be sufficient. On the other hand, criminal opportunities can be reduced by concerted action. Nevertheless, the growth of criminal justice bureaucracies may even prove to be counterproductive, not only with lacuna of democratic skills, but also because red-tape and bureaucratic 'turf wars' lead to misplaced energies and delays in action when formal procedures are followed. The idea is not to suggest that formal mechanisms be discarded in favour of informal collaboration. On the contrary, the idea is to give a little more attention to cooperative relations. And, in this sense, we suggest the increase of the role of PS in IJCC could result in this.

Crime has always been international in nature. States made it a concern of their own sovereignty and power over governed persons. Now they are entrapped by the magnitude of transnational criminality and inflexibility of their own systems. Success in combating transnational crime depends on the design of the international cooperative machinery. For this, the use of the already existent criminal justice infrastructure is desirable and imperative. Likewise, strategic investments should be made taking into consideration factors that lead to the flourishing of transnational criminality, of importance here are the professionalization of their human sources and information technology, gives the goal of concerted action.

Recalling the argument we termed *positional value*; the fact that PS are the backbone of domestic criminal justice and the increasing role of prosecutors in administering criminal justice in their domestic jurisdiction; the fact that it is not necessary to have the same structure of PS around the world to enable their role in IJCC,¹²⁵ but basic standards alone to harmonize their output; the improvements achieved in Germanic criminal justice on account of its PS;¹²⁶ the weight, recognizing the above points, given by the CCP to the EPS to deal with transnational crime in the EU (although only budgetary ones); the international law tendency established by the prosecution offices of the UN war tribunals and the ICC; the problems in the concentration of power in 'super-agencies' and new forms of policing, rather than in a democratic web structure; and finally, the responsibility of PS to control crime and their obligation to protect civil liberties and guarantee of human rights: all these make the PS the epitome of a concerted action for IJCC.

IJCC success depends on many factors. Nevertheless, it certainly could be improved with the PS playing, in the international scenario, the same crucial role they play in domestic judicial criminal procedure.

¹²⁵ Even in countries without a tradition of public prosecution services like in England and Wales, the placement of crown prosecutors in police stations is already a reality and, in addition there are signs that police forces responsible for transnational criminality — National Crime Squad — have been also working with crown prosecutors to speed up their requests and secure their actions.

¹²⁶ GRAHAM, *op.cit.*, p.154-156; 167.

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