

## Speech by DPP

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Following is the speech titled 'Cooperation in the combat of terrorism and terrorist finance - an Asian perspective' by the Director of Public Prosecutions, Mr Grenville Cross, SC, at the Plenary session on 'Transnational Criminal Networks' of the 8th Annual Conference and General Meeting of the International Association of Prosecutors at Washington, DC, USA yesterday (August 14, Washington, DC time):

The combat of terrorism is too important an issue to be simply left to the politicians, the law enforcers and the military. If terrorism is to be countered effectively, and combated in a balanced way, the role of the prosecutor must also be central. All the experience we have gained in the prosecution of organised crime must be deployed to best advantage in the face of this menace. It is the prosecutor who knows how to advise the investigator, how to marshal the evidence, how to present a case, and how to confront challenges to admissibility made on constitutional and other grounds. It is the prosecutor as well who supplies the perspective which the courts expect of those concerned with the proper administration of criminal justice.

Since 9/11, terrorism has been the major geopolitical theme. It has replaced globalisation, the environment, poverty and even disease at the top of the international agenda. Barely a day passes without news of another bombing or a terrorist outrage. The affairs of the world are very much on hold as we wait for the next phase of the war against terrorism. This has affected profoundly the attitudes and approaches of all of those concerned with stability and standards in civil society. As prosecutors we must be under no illusions. Terrorism is here to stay.

As long as there are people who are driven by paranoia, fanaticism and extremism, terrorism will remain a menace. As long also as there is poverty, injustice, strife and oppression, conditions will exist which terrorists can turn to their advantage. This is why the campaign against terrorism must be conducted at all levels, including political, economic and humanitarian. That campaign will not succeed, however, if prosecutors do not play the fullest of parts in helping to bring those suspected of terrorist activity to justice. We must be prepared to adjust our conceptions, to be creative in thought and deed, and to move onto the offensive so as to meet the unprecedented challenges which all our societies face. US Attorney General John Ashcroft has rightly spoken of the need to replace 'a reactive culture of compartmentalisation with an assertive and courageous culture of action and results'. At the same time, prosecutors must not lose sight of such matters as due process, fair and open justice, the need for proper defence of those suspected of crime and the importance of transparent and impartial verdicts by courts of law.

'Terrorism', it has been said, 'is about gaining power through violence, and money is a means to that end'. Terrorism requires access to international payment systems. It is only if it can acquire finance and move the money around, that a terrorist group can acquire the weapons, communication systems and training that are necessary to conduct an effective campaign over a sustained period. Terrorists, like organised criminals, make use, for example, of credit card fraud and cheque fraud. That is why vigorous identification checks must be conducted on potential customers by credit card companies. The loopholes in money laundering legislation must be closed. As an active member of the Financial Action Task Force on Money Laundering (FATF), and as its president at the time of 9/11, the Hong Kong Special Administrative Region (HKSAR) has worked decisively and successfully to coordinate global efforts to curb terrorist financing.

The disruption and seizure of terrorist monies are vital to any successful anti-terrorist strategy. To the extent that existing mechanisms are inadequate or outdated, our duty as prosecutors is to make the case for change, and to explain how the law requires to be refined to cope with the threats now faced. In that process we must draw upon our experiences in the preparation and presentation of cases and be careful not to underestimate the capacity of those who deal in illicit funds to adjust their operations to avoid detection and prosecution by making best use of the latest technology.

Although Hong Kong has not experienced terrorist activity as such, we remain on alert in all areas, and we have acted decisively on the legislative front. We are aware of the possible abuse of our status as an international city by those who would wish to launder illicit money through our financial system. Hong Kong recognises that information kept by financial institutions in relation to the holding and transfer of money is critical to the investigation of money laundering. We acknowledge as well that the war against terrorism cannot succeed unless and until terrorist funds are identified, seized and confiscated.

Well before 9/11, Hong Kong tightened the regulatory regime of its financial sector. Since June 2000, remittance agents have been required to register with police and to keep records of clients who make transactions of more than \$20,000 for six years. Since then, 783 remittance agents have been registered and 37 people prosecuted for failure to comply with the law. It is imperative for non-bank businesses to adopt effective procedures, not least in the areas of customer identification and the reporting of suspicious transactions. Since terrorists deploy 'reverse money laundering' techniques, by using money obtained legally for illegal acts, and launder small amounts of 'clean money' so it can be used for 'dirty ends', it is obvious that traditional methods to track down funds are no longer adequate, and that heightened vigilance by financial institutions is vital. In light of the latest IMF proposals, Hong Kong is now examining how to tighten yet further its regulatory regime.

In the mainland of China, in the Hong Kong Special Administrative Region, and in the Macao Special Administrative Region (MSAR), a direct focus of law enforcement in recent times has been upon the aggressive and imaginative combat of terrorism and terrorist finance, and upon cooperation with the civilised world in global efforts to counter the problems posed by terrorism. Let me say some words about that.

After 9/11, Hong Kong empowered its law enforcers to freeze terrorist funds, subject to court oversight. Financial institutions and businesses are required to report transactions that might be terrorist-related. Anti-terrorism legislation has been enacted which is designed to bring Hong Kong into compliance with UNSCR 1373 and FATF recommendations. Legislation is in the pipeline to facilitate the seizure of non-fund property, as well as to implement the Bombings Convention and the Maritime Safety Convention. Hong Kong also recently signed the Container Security Initiative (CSI) with the United States, which is an American effort to prevent terrorists from exploiting global maritime trade to transport their weapons around the world. As Hong Kong is the world's busiest container port, with more than 10% of US imports transiting in Hong Kong, the CSI will have a major impact on global security and global economies.

As early as 1996, China founded the body now known as the Shanghai Cooperation Organisation (SCO), with Russia and Central Asian States, in order to foster cooperation in the battle against terrorism, with particular reference to terrorist threats emanating from Afghanistan. In June 2002, the SCO agreed to establish an anti-terrorism centre in Kazakhstan. China has worked vigorously since 9/11 with the United States, Japan and other member states of the Asean

Regional Forum (ARF) to adopt measures to combat terrorism. China and ARF governments have pledged themselves to stop the financing of terrorism, to freeze terrorist assets, and to implement quickly and decisively the measures the United Nations has decreed as mandatory, and to cooperate on the exchange of information. This represents a determination which bodes well for security in the Asia Pacific Region. China has given her full support to all relevant UN initiatives against terrorism, including, crucially, UNSCR 1373, the International Convention for the Suppression of the Financing of Terrorism, and the Bombings Convention.

On 29 December 2001, China adopted amendments to her Criminal Law in order to 'punish terrorist crimes, ensure national security and the safety of people's lives and property, and uphold social order'. In November 2002, China joined hands to combat terrorism with South East Asian Nations through the 'Joint Declaration of Asean and China on Cooperation in the Field of Non-traditional Security Issues'. This prioritised the combat of terrorism and money laundering and committed the parties to 'deepening the existing multi-lateral and bilateral cooperation'. The office which the FBI established in Beijing in October 2002 is facilitating the counter-terrorism agenda. China's Ministry of Public Security has itself established an anti-terrorism bureau, which analyses information, coordinates campaigns and provides advice to counter terrorism, while conducting investigation into terror groups and maintaining contact with international anti-terrorism agencies.

In Macao, Hong Kong's neighbour in the Pearl River Delta, legislation was enacted after 9/11 that contains provisions consistent with UNSCR 1373. That has criminalised violations of Security Council resolutions directed at terrorist activity. Macao recognises the importance of designating terrorists, freezing their assets, and prosecuting those who commit terrorist acts either within Macao or elsewhere. Macao's financial regulatory authorities direct financial institutions to search for terrorist funds, using lists of individuals and entities designated by the US, as well as the UN 1267 Sanction Committee's consolidated list of individuals and entities associated with members of Al-Qaeda, the Taliban and bin Laden. In the latest United States Macao Policy Act Report, it is stated that 'over the past year, the Macao government has reiterated its support for the global anti-terrorism campaign and enacted anti-terrorism legislation ... Macao's anti-money laundering framework is in line with international standards'.

The commitment of all parts of China to the effective combat of terrorism is real, practical and continuing. The need for cooperation and liaison is also recognised throughout China. That places China in line with international norms in this area at a critical time.

A central article of the Palermo Convention is that which deals with mutual legal assistance. It contains practical guidance as to how states can cooperate with one another. Techniques which have proved of value in bilateral cooperation will, upon ratification, be elevated to global status. The electronic transmission of requests from one place to another is allowable under the language of the Convention. Such streamlining is essential as traditional modes of legal assistance have not always proved salutary. Time is of the essence in the combat of money laundering, and the seizure of assets must not be delayed by inertia or red tape. As prosecutors we must make the case for laws which enable money to be frozen immediately, pending the making of a request, or, in a domestic case, by the time a restraint order can be made. We must also press for greater and better modes of mutual legal assistance. In that process Hong Kong, as Asia's World City, is determined to play its full part.

The Mutual Legal Assistance in Criminal Matters Ordinance is an instrument which enables Hong Kong to assist those in other places who are involved in the investigation and prosecution of

crime. Since 1997, the international legal cooperation which Hong Kong has provided has centred on three areas :

\* mutual legal assistance in criminal matters

\* surrender of fugitive offenders (extradition)

\* transfer of sentenced persons

Through these arrangements, Hong Kong's capacity to assist law enforcers elsewhere is wide. Evidence can, for example, be taken in Hong Kong in a criminal case which arises elsewhere but which is still at the investigative stage. Orders issued elsewhere for the confiscation of the proceeds of serious crime can be enforced in Hong Kong. Search warrants can be used in Hong Kong to obtain evidence for production elsewhere. To take advantage of such procedures, the state seeking assistance is required either to enter into a mutual legal assistance agreement with Hong Kong, or to provide an undertaking of reciprocity to assist Hong Kong in comparable circumstances. As at 30 June 2003, Hong Kong had signed or initialled 26 mutual legal assistance agreements with other jurisdictions and that process is ongoing. The number of requests made to, and received by the police for assistance in money laundering and confiscation matters with other jurisdictions in the past six years is as follows :

	U.S.A.		Canada		Australia		Others		Total
	To	From	To	From	To	From	To	From	
1997	6	6	3	5	28	30	14	5	97
1998	38	62	7	11	38	81	44	17	298
1999	41	3	10	7	25	16	34	14	150
2000	27	7	27	19	26	6	14	8	134
2001	51	5	29	15	33	10	46	18	207
2002	90	15	43	20	74	27	163	27	459

These figures demonstrate Hong Kong's commitment to working in tandem with others to locate and to strike at illicit assets. Not only are we concerned with protecting the integrity of our own financial system, but with assisting others to safeguard theirs. By its laws and by its actions Hong Kong has placed itself at the forefront of the fight against international criminal activity, and it is our firm intention to remain there. As part of that process we recognise that our prosecutors must be focused and imaginative, and work to a defined agenda.

I consider that the central elements of a successful global anti-terrorist agenda must include :

- (1) Agreement as to what conduct should be regarded as criminal, and what should be the ingredients of the offence;
- (2) Pro-active approaches to mutual legal assistance;
- (3) Prompt exchanges of information and intelligence between law enforcement agencies;
- (4) Sharing of anti-crime models by those who have them with those who have not;
- (5) Pooling of training programmes;

- (6) Laws with extra-territorial reach;
- (7) Elimination of safe havens;
- (8) Uniform international standards on money laundering;
- (9) Implementation of the Wolfsberg Principles to promote a partnership between banks and governments to combat terrorist financing;
- (10) Effective schemes for witness protection at all levels;
- (11) Issuing of official lists of suspected terrorists and terrorist organisations in different jurisdictions;
- (12) Techniques to facilitate the testimony in one jurisdiction of witnesses from another;
- (13) Aggressive and creative deployment of all legal means to bring offenders to justice;
- (14) Protection of human rights in the administration of justice and in the prevention and control of crime;
- (15) The capacity to think globally, to talk globally and to act globally.

President Bush once said that 'the defeat of terror requires an international coalition of unprecedented scope and cooperation'. With that few will disagree. We can agree as well that in that process the prosecutors must play their part. I have sought to outline an agenda which is both practicable and attainable. I commend it to this Conference. If the prosecutors of the world can cooperate with one another along agreed lines in the campaign against terrorism, I am certain that all our societies, diverse as they are, will stand to benefit. I believe as well that those on whose behalf we act will feel all the more secure.

End/Friday, August 15, 2003  
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