Existing treaties on transnational crime and the proposed Protocol

Professor Neil Boister, an expert in transnational criminal law, outlines how the Protocol could be made consistent with existing legal frameworks.

One of the issues raised on the first day of the INB in plenary was whether the Protocol would duplicate provisions in existing treaties providing for international co-

operation against transnational crime.

At a simple level, this question can be answered by reference to the fact that the Parties to these earlier treaties will not necessarily become party to the FCTC or to the proposed Protocol on illicit trade, which necessitates a new and comprehensive agreement.

The more complex answer is that of these existing treaties the vast majority of multilateral treaties deal with specific forms of criminality.

The only "general" treaty is the UN Convention on Transnational Organised Crime (UNTOC), settled at Palermo. This convention provides, however, for the criminalisation of organised criminal groups involved in serious offences

and thus has its own peculiar material scope.

In the development of UNTOC the same issue of duplication also came up, raised by Australia, Austria and other States. It was decided at a very early stage that the main convention would deal with organised crime but that allied, but independent, issues of trafficking humans, people smuggling and small arms trafficking, would be dealt with in separate protocols, each of which has its own legal assistance regime.

It is thus clear that the proposed Protocol on illicit trade follows an established pattern of development.

This is entirely consistent with the two main goals of such instruments: the standardisation of criminal offences across different jurisdictions; and the establishment of a mutual assistance regime in respect of these criminal offences, in order that national boundaries do not serve to protect criminals.

There is in the nature of these instruments some overlap – one piece of national legislation may serve to meet treaty obligations in respect of a number of treaties, one set of procedures may serve many offences. But the method of international society in making a community response to crime has been to deal with each crime separately and to attach a particular procedural regime to each – which is what is proposed in the Template.

Professor Boister will be speaking at Wednesday's lunchtime briefing at 14.15 hours in Salle 4.

Guess what...

It's déjà vu all over again!

Listening to Japan from the floor today one could be forgiven for thinking that half a decade of FCTC negotiations had not gone by and we were back in 2003.

This article below is from *Alliance Bulletin 36, 17 February 2003, FCTC INB 6, Geneva:*

"Tobacco – it's a legal product!

"You can usually tell when someone is about to sell out public health and offer justification for a weak and inadequate treaty. They start by saying, 'Well, you have to accept that tobacco is a legal product…'.

"But the legal status of tobacco has an extremely limited meaning: it means that if you make it, sell it or use it, you are not committing a criminal offence.

"It creates no additional fundamental rights that prevent governments regulating it – for example by banning its advertising and misleading branding.

"Many legal products are subject to exacting legal restrictions – weapons, dangerous chemicals, asbestos, pharmaceuticals, and hazardous wastes to name just a few. 'Tobacco is a legal product' is the classic non sequitur rolled out by tobacco apologists everywhere."

Japan sounded like a broken record on Tuesday, responding to almost every issue raised: "Japan does not support these measures." It even opposed any measures at all which would require manufacturers to control their supply chain. Rather surprisingly, Japan supported licensing in principle but in practice wanted to remove the elements necessary to make it effective on the basis that they were "not proportionate."

With the tobacco epidemic claiming 5.4 million victims a year, it is Japan's standpoint which is not proportionate.