



International cooperation in criminal matters in the XXIst century: towards a new approach?

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Speakers

- 1. John Vervaele: Introduction
- 2. Gert Vermeulen: Transnational criminal law and MLA- civil law perspective
- 3. Anne Gallagher : Transnational criminal law and MLA- common law perspective
- 4. Vladimir Aras: Experience with MLA in Latin America
- 5. Zlata Durdevich: MLA in the framework of the international criminal courts
- 6. Katalin Ligeti: Defence rights in international cooperation



Vervaele: Introduction

- Updating the tools (renewal) of existing treaty-framework
- Updating the institutional design
- Duty to cooperate and limited exceptions
- Applicable law
- The position of defense/victims
- Updating Model Treaties: civil law-common law divide?



Vermeulen

- Need for direct cooperation
- Need for enhanced expediency
- Fuller regit actum principle
- Telephone/conference hearings
- JIT's
- Real-time investigative measures
- Refusal grounds/defense/ne bis in idem
- Corporate crime
- Intelligence community



Gallagher

- **Introduction: background and context**
- **Common law challenges**

Key issue: origin of the request

Problems of recognition

Problems of delay

A new approach? (Informal prosecutor to prosecutor contact followed by expedited formal procedures)

- **Trafficking in persons**

The role of ILC in TIP cases

Obstacles

Opportunities

The ASEAN experience



Arras

- Lack of proper legislation on MLA and extradition
- No rules to allow the free movement of evidence
- No legal scheme for cooperation in border zones (cross-border cooperation)
- Poor capacity to enforce foreign judgments
- No experience to transfer criminal proceedings

Durdevic

- International cooperation with the ICC: status quo or improvements?
- Vital importance of international cooperation for international criminal courts
- Types of cooperation
 - investigative, procedural, administrative, political, diplomatic
 - mandatory / voluntary
- Actors of cooperation and their obligations
 - state parties
 - non-party states
 - international organizations
 - civil society
- Non-cooperation: reasons, justifications and excuses
 - lack of political will on national and international level
 - competing international obligations
 - subsidiarity: inadequate national legal framework
 - peace v. justice dilemma
 - statutory obstacles (domestic proceedings, national security interests)
- New developments: status quo or improvements?

Ligeti

- MLA and the position of the defence: mere object of the cooperation between states?
- Main challenges for the defence resulting from MLA
 - who is responsible for investigative measures undertaken in different countries?
 - how to control the legality of investigative measures undertaken abroad?
 - can the defence participate in the execution of MLA requests?
 - can the defence use MLA to collect evidence?
- Need for a reformed MLA that provides for an improved equality of arms in the transnational setting by
 - granting the right to the defence to collect evidence by MLA,
 - allowing for the defence to participate in the execution of requests,
 - providing for violation of human rights as a ground to refuse MLA.
- MLA should acknowledge the defendant as a legal subject with rights and remedies!