International Cooperation and Criminal Justice

by

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The Republic of South Africa occupies a very important position in the world, when it comes to the issue of international law enforcement cooperation. This does not come about solely because of the ascendancy to the Presidency of Interpol by the National Commissioner of the South African Police Service Mr. Selebi, but because of a variety of other circumstances.

The South African economy is widely acknowledged as the biggest in Africa. This attribute, itself, makes the country attractive to all sorts of people including criminals.

The advent of democracy in 1994 opened up South Africa to the rest of the world. A country, which was hitherto a pariah state, was now acceptable to almost all countries and everyone was in a hurry to establish relations of some sort with the new democracy.

In the law enforcement arena, the opportunity to strengthen law enforcement cooperation within the Southern African region was identified at a very early stage by police officers within the region.

The Royal Swaziland Police seized the initiative and hosted a Senior Executive Police Management Seminar at the Mananga Management Centre from the 19th – 23rd September 1994 in Swaziland.

From this seminar, a watershed resolution was made encouraging the Chiefs of Police to build stronger links for purposes of cooperation against transnational crime.

The momentum grew from that moment until 1995, when Chiefs of Police in the region resolved at Victoria Falls to form an organisation to be known as the Southern African Regional Police Chiefs Cooperation Organisation, SARPCCO.

SARPCCO was formed consequent to a realisation that the Southern African region faced a growing transnational crime threat emanating from within the region and more worrying was that emanating from outside the region.
The objectives of SARPCCO are set out in Article 3 of the Constitution and these are to:

(a) promote, strengthen and perpetuate co-operation and foster joint strategies for the management of all forms of cross-border and related crimes with regional implications;

(b) prepare and disseminate relevant information on criminal activities as may be necessary to benefit members to contain crime in the region;

(c) carry out regular reviews of joint crime management strategies in view of changing national and regional needs and priorities;

(d) ensure efficient operation and management of criminal records and effective joint monitoring of cross-border crime taking full advantage of the relevant facilities available through Interpol;

(e) make relevant recommendations to governments of members’ countries in relation to matters affecting effective policing in the Southern African region;

(f) formulate systematic regional police training policies and strategies taking into account the needs and performance requirements of the regional police services/forces;

(g) carry out any such relevant and appropriate acts and strategies for purposes of promoting regional police co-operation and collaboration as regional circumstances dictate.

South Africa is a full member of SARPCCO and this country played a very pivotal role in the formative stages of the organisation.

Most of the negotiation sessions, which formulated the organisation's Constitution and the Multi-lateral Agreement in respect of Cooperation and Mutual Assistance in the Field of Crime Combating, took place in South Africa. A lot of money, time and effort went into the production of these documents, which constitute the foundation for SARPCCO.

The Multi-Lateral Agreement on Cooperation seeks to create a very flexible environment for cross-boarder movement of police officers, cross-border criminal investigations and mutual legal assistance.

In terms of the SARPCCO Constitution the organisation is composed of the following structures:

(i) Council of Police Chiefs – the top decision making body.

(ii) Permanent Coordinating Committee – composing of the Heads of Criminal Investigation Departments throughout the region. This group is responsible for all anti-crime operations.
(iii) Training Sub-Committee – responsible for identifying regional training needs, producing relevant curricula and facilitating the execution of such training courses.

(iv) The Legal Sub-Committee – This committee is responsible for rendering legal advice on any issues referred to them by the other structures.

(v) The Secretariat – The Interpol Sub-Regional Bureau for Southern Africa, situated in Harare, was appointed in terms of Article 5(5) of the SARPCCO Constitution to be the "administrative and technical body through which SARPCCO shall operate".

What is important is for us to appreciate the role that South Africa has played in the formation of SARPCCO, the role that it is playing in SARPCCO's current activities and the role that we foresee it playing in the future activities of SARPCCO.

As alluded to before, when the idea to form a regional law enforcement cooperation mechanism was conceived, South Africa was one of the most active countries in that process.

The motivation was in my view obvious. This was a country which hitherto was an outcast in the region but now having attained democratic rule in 1994 enjoyed the goodwill and fraternal relations with all countries in the region and beyond.

Even in the early stages of democratic rule, it was clear to the police authorities that South Africa faced a serious problem of crime, which was fuelled by a diversity of factors. It therefore became imperative that a strong forum for international law enforcement cooperation was needed in the region.

Thus it came as no surprise to most people, that South Africa dived in headlong into the formation of SARPCCO. At the time that SARPCCO was created, there was a simultaneous process going on for the creation of an Interpol Sub-Regional Bureau for Southern Africa.

When this office became operational, South Africa distinguished herself in terms of the material and human resources that were made available to get the bureau operational.

As indicated before, SARPCCO's structure comprises of among others, the Permanent Coordinating Committee of Heads of CID. Since its formation the PCC has dedicated itself to conducting multi-lateral joint operations throughout the Southern African Region. These multi-lateral operations involve the coming together of police officers from the region and conducting police operations from one country to another.

This involves huge financial and other resources. Typically the South African Police Service who provide all the mobile telecommunications and computer technology necessary for such kind of operations has always constituted the bulk of the operational team.

The operations have been targeted at the following:
(i) Stolen Motor Vehicles  
(ii) Drugs  
(iii) Firearms  
(iv) Illicit diamonds and other precious minerals  
(v) Illegal immigrants

There is no doubt that South Africa records the highest statistics in the region in all the categories listed above.

A cursory glance at the statistics on theft of motor vehicles from 1994/95 to 2003/2004 reveals that when the crime was at its peak in 1994, 105,867 vehicles were stolen. These numbers have now decreased to 88,144 in 2003/2004.

I have no doubt that the joint operations that have been carried out since 1994 have had an impact. Since Operation V4, conducted in 1997, up to Operation Mhakure, conducted in 2004, a large number of stolen South Africa vehicles have been impounded throughout the region.

A reasonable percentage of these have been repatriated to South Africa and in some instances, the people in whose possession such vehicles were found have been prosecuted.

However, there are some countries in which the process of repatriation of these stolen vehicles is riddled with corruption, inefficiency and lack of transparency.

South Africa, being the biggest loser of vehicles through theft and hi-jacking needs to adopt a very radical position to ensure that all the SARPCCO members adhere to their obligations to repatriate stolen property in line with the objectives of SARPCCO as stated in Article 3 of the Constitution and also in conformity with the Multi-Lateral Agreement.

The challenge that lies before the South African Police Service is to continue to play a pivotal role in these joint operations until the environment in the region is such that there is no ready market for stolen vehicles.

Another major challenge that South Africa faces, which requires international law enforcement cooperation is violent crime fuelled by illicit firearms.

As stated before, the joint operations that are conducted every year also target illicit firearms. The success rate in the seizure of illicit firearms has not been as impressive as that relating to stolen vehicles.

The most notable success is Operation Rachel, which brought together the South African Police Service and the Mozambique authorities with the objective to search for, identify and destroy arms caches associated with the civil war in Mozambique.

A large quantity of firearms and ammunition was indeed found and destroyed through that operation, which brought some semblance of relief to South Africa.
The firearms, mostly military automatic weapons, were being used by organised criminals to carry out cash in transit robberies which were at their peak in 1996/97 when 359 such robberies occurred. In 2003/2004 those incidents had fallen to 192.

Of course the factors contributing to the decline cannot be solely attributed to Operation Rachel, but we would submit that the decreased supply had an impact.

South Africa also has a problem with drug related crimes. We have acknowledged that South Africa is the biggest economy in Africa. This has tended to make her a hub for all drug related activities, ranging from local production, importation, exportation and consumption.

The drug trade, especially cannabis, seems to be going in one direction. The poorer farmers in neighbouring countries that have an ideal climate for the cultivation of dagga are increasingly producing the plant with the intention of exporting it to South Africa where good prices are found and where some of it is exchanged for illicit firearms, that are later used to commit violent crimes against persons and property.

The importation of hard drugs into South Africa from South America and South Asia (Pakistan especially) requires of the South African Police Service to ensure that it has strong operational links with police authorities in those areas in order to effectively stem the tide of hard drugs coming into the country.

I have discussed above the operational efforts that are being undertaken to deal with transnational crime in our region. One other critical area in my view is that of fugitives.

It is my sincere view that for South Africa and the Southern African region to succeed in the campaign against transnational organised, crime fugitives need to be traced, located and surrendered to face trial where they are required.

As a strong and vibrant economy, with a very new constitution that comparatively assures more individual rights and freedoms, South Africa is to a fugitive offender what a light is to a moth. Fugitives find it attractive to flee to South Africa because the legal system there offers them some protection that they would not necessarily find in other countries in the region.

Additionally fugitives have become aware of certain places in South Africa where if they ensconce themselves in there, the probability of them being arrested by the police is almost next to nothing.

One other worrying dimension is that of South African criminals crossing borders to commit crimes in neighbouring countries sometimes even murder, and then fleeing home and using the extradition laws to frustrate the effort of the neighbouring country to have them brought for trial. One might also raise the issue of extradition of foreign criminals wanted for murder in neighbouring countries where the death penalty is still in the statute books.

One would understand the reluctance of the South African authorities to extradite a South African citizen to a country where they would face a death penalty.
But it is rather incongruous for South Africa to refuse to extradite, for example, a Motswana, wanted in Botswana for the murder of a Motswana citizen. In most occasions these fugitive criminals do not even enter South Africa lawfully, rendering them illegal immigrants.

There is an urgent need for a paradigm shift in the authorities responsible for this policy area, lest neighbours view South Africa as a safe haven for fugitive criminals.

From the inception of SARPPCCO, it was realised that the improvement of the level of skills and knowledge of officers in the region was critical to the success of law enforcement.

The creation of the training sub committee and its mandate was intended to address this area of need.

Since its inception, many courses have been run in the region under the auspices of SARPPCCO or Interpol.

South Africa has made once again a very distinguished contribution in the hosting and execution of such courses.

These courses include the following:

(i) Motor Vehicle theft investigation
(ii) Crime Intelligence
(iii) Commercial Crime
(iv) Computer Crimes
(v) Terrorism
(vi) Stock Theft
(vii) Firearms identification and safe handling

There are a host of other courses, which have been run and hosted by the South African Police Service.

It is once again pertinent to note that due to its strong economy and well developed infrastructure, South Africa is placed at an advantage when it comes to the hosting of these regional training courses. Our hope is that South Africa will continue to avail its resources, when they are needed for the improvement of policing skills within and beyond the region.

It stands to benefit from such development. South Africa is a member of the International Criminal Police Organisation – Interpol.

At this moment its responsibility as a member is accentuated by the fact that the National Commissioner of the South African Police is the first President of Interpol to come from Africa.

This now broadens the extent of South Africa's contribution to the enhancement of law enforcement cooperation from the Southern African region to Africa and the whole world.
There are many needy sub regions in other developing regions of the world, which will look to South Africa, as President of Interpol, to ensure that all countries are enabled to contribute to the attainment of Interpol’s vision, which is "To create a safer world".

Already South Africa has clearly demonstrated that it appreciates the critical importance of international law enforcement cooperation by appointing police attaches at a number of their embassies throughout the world. This is very commendable and we would like to encourage other countries in the region to follow suit, although not necessarily at the same scale.

What the police have done to try to address international law enforcement cooperation in the region is commendable.

It is not surprising that the police felt motivated or should we say pressurised to join hands to deal with trans-national crime. In the process, they have endeavoured to break down the walls that impeded their cooperation.

I wonder whether the same can be said of other agencies in the criminal justice system. It is apparent in our assessment that the Judiciary and the Prosecuting Authorities have failed to match the pace at which police have advanced in facilitating international law enforcement cooperation.

It would appear that information on the extent of trans-national crime and the modus operandi of organised criminal syndicates is not effectively reaching the ears of our judges and prosecutors.

Otherwise the conservatism and rigidity that we often see in the legal process when dealing with issues of bail, extradition and mutual legal assistance would have abated by now.

My challenge to the judiciary and the prosecuting authorities is for them to realise that times have changed. We are no longer dealing with the same kind of crime and criminal that we dealt with fifteen (15) years ago.

The modern criminal is able to identify weaknesses in the legal system or the criminal trial process that inhibit cooperation between judicial authorities and exploit these to their advantage and the detriment of society.

No institution in the criminal justice system should remain steeped in the past when everything has moved into the 21st century mode.

**Conclusion**

It is clear that South Africa by virtue of its position in Southern Africa, Africa and the whole world, is a very important player in the combating of trans-national crime.

With its assumption of the Presidency of Interpol, its membership of SARPCCO and its hosting of FIFA World Cup 2010, it is pertinent that their contribution to international law enforcement cooperation should move from strength to strength.
The SAPS has played a very important role in the conducting of joint operations throughout the region by providing the necessary manpower and logistics throughout.

The SAPS have also made a distinguished contribution in the execution of regional training courses by providing the facilities and other requirements.

South Africa has also demonstrated its appreciation of the importance of strong international law enforcement cooperation by seconding officials to the Interpol General Secretariat, the Interpol Sub Regional Bureau for Southern Africa and by appointing Police attaches to a number of countries within the region and beyond.

This is indeed a sterling contribution.

However, lest this be forgotten, this sterling contribution should not mislead anybody to think that South Africa should dictate regional policing strategies.

Article 4 of SARPCCO spells out the principles of cooperation and some of the most important for purposes of our discussion are the following:

(i) respect for national sovereignty
(ii) equality of Police Services
(iii) mutual benefit to all members

We are inclined to believe that all initiatives in which South Africa has invested time, money and other resources have resulted in some benefit to the security situation in South Africa and that this shall continue to be so.

It is our hope that South Africa will continue to view its neighbours and partners in the fight against trans-national crime as equal partners and avoid any paternalistic attitudes.

In conclusion we would like to express our profound appreciation for the contributions thus far made and look forward to even better days.

Thank you.