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Issues of international cooperation in criminal proceedings: Some problems of reform

Cuestiones de cooperación internacional en los procesos penales: Algunos problemas de reforma

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Abstract

It is studied reforming's problems of the teamwork between countries in the field of criminal justice. The fundamental principles on which the teamwork of countries in the struggle with transnational crime is built, both generally accepted and enshrined in the lawmaking of the Republic of Azerbaijan, as well as the principles that were studied in the works of foreign scientists, were analyzed. After analyzing these principles, the authors identified problematic aspects of the existing teamwork between the efforts of countries in the area of resisting transnational crime, suggested possible ways to solve them. Separately, the authors of the article studied and analyzed the problem of reforming legislation in the sphere of the teamwork of countries in the area of resisting transnational crime at different levels, taking into account the latest global trends in the area of resisting transnational crime. It is defined that the Republic of Azerbaijan is a democratic state in the sphere of the teamwork of countries in the area of resisting multinational crime. An analysis was made of the cause-and-effect relationships between globalization and digitalization of the world community, and crime without borders, their impact in the aggregate on the international teamwork of countries in this area.

Keywords: criminal procedure, organized crime, international cooperation, criminal justice, reform.

Resumen

Se analizaron los principios de la cooperación internacional en el ámbito de la justicia penal, tanto los generalmente aceptados como los consagrados en la legislación de la República de Azerbaiyán, así como los principios que fueron estudiados en los trabajos de científicos extranjeros. Tras analizar estos principios, los autores identificaron los aspectos problemáticos de la cooperación internacional en el ámbito de la justicia penal y sugirieron posibles formas de resolverlos. Por otra parte, los autores del artículo prestaron atención al problema de la reforma de la legislación en el ámbito de la justicia penal a nivel nacional e internacional, teniendo en cuenta las últimas tendencias mundiales en la lucha contra la delincuencia transnacional. Se hace hincapié en el hecho de que la República de Azerbaiyán es un Estado independiente en la cooperación internacional en la lucha contra la delincuencia organizada y afronta con éxito los problemas de las reformas en el ámbito de los procedimientos penales en el marco de la cooperación internacional. Se analiza el estado de la base legislativa, la dinámica positiva y negativa de la aplicación de las reformas proclamadas en la República de Azerbaiyán en el marco de la cooperación internacional en la esfera de la justicia penal, los mecanismos de regulación estatal de la lucha contra la delincuencia organizada, la observancia de los acuerdos internacionales sobre la cuestión.

Palabras clave: procedimiento penal, delincuencia organizada, cooperación internacional, justicia penal, reforma.

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Introduction

In order to effectively fight crime across borders, it is necessary for all countries to join forces, test new methods of combating transnational crime, and weigh the need to maintain old models of criminal justice cooperation in order to decide whether they should be discontinued or transformed into new, effective structures of cooperation.

It is an undeniable fact that crime, especially of a transnational nature, at the present stage of society's development poses an extremely serious danger on a global scale to its further development. Crime, when it leaves the borders of one state, thus creates additional difficulties for its government when it takes the necessary measures to combat it, regardless of the availability of the necessary means for this purpose. The crime that takes the form of international forces the states to recognize the fact that the efforts of a single country are insufficient to combat it. No State in the world can be sure that transnational crime can be defeated without international cooperation.

Modern social life, with all the variety of relations it encompasses, covers the fields of law, economics, and politics, is not static; it is in constant flux and transformation. It is fact that with the development of integration processes in the world community, which are taking place in many countries, including the Republic of Azerbaijan, there is increasing interest in the ideas of justice, equality, and humanism, in the general social, criminal law and criminal procedure aspects.

The Republic of Azerbaijan, like many other states in Eastern Europe, has come under attack from the international criminal world, facing challenges such as combating illegal proceeds and money laundering, drug and arms trafficking, illegal migration and human trafficking, terrorism and corruption, and other crimes of a transnational nature. The creation of an effective mechanism of cooperation of the Republic of Azerbaijan with other states to counteract these dangerous crimes in particular and transnational crime in general, as well as building a state system of preventive response to situations arising from the criminal activities of transnational organized crime was a response to this challenge.

It should also be noted that the development of information and communication technologies not only reflects the development of human

civilization but also generates new types of the crime of transnational character, such as the spread of pornography, bank card fraud, distribution of viruses, theft of funds from bank accounts, to name just a few new criminal problems generated by technological advances for states around the world. In order to prevent and combat these kinds of borderless crimes, which can occur anywhere in the world, a concerted international approach by states to combating transnational crime at various levels is necessary. Moreover, this approach should be innovative, because these crimes are not only socially dangerous but also unusual. Accordingly, reform is needed for existing models of the teamwork between countries in the field of criminal justice.

When considering the reform of future international cooperation in criminal matters, there are doubts about the sustainability of the current regime of this partnership of countries, its structure, and the mechanisms that support it, and the institutions and bodies that carry it out. It is important to understand what needs to be retained from the current regime of international cooperation in criminal matters, what are the important missing elements, and how the UN, Interpol, and other international institutions can facilitate reform to more effective multilateral mechanisms for international cooperation in criminal matters.

Быстро меняющийся мир требует принятия быстрых и эффективных решений во всех областях человеческой жизни. В первую очередь, это утверждение касается области права и правосудия, также неоспоримым является и то, что подобные решения должны иметь универсальный характер, который устраивал бы всех участников отношений, которые принимают в них участие. International cooperation in combating transnational crime involves the development of a universal model that could adequately provide a coordinating role between the regional mechanisms of combating the crime of individual states and their common efforts in this direction.

In this article, the authors outlined possible ways to reform international cooperation in criminal justice that could affect the future success of the fight against transnational organized crime.

Literature review

The practical work of the agencies involved in criminal justice is directly based, among other things, on the theoretical developments of scholars and on norms of criminal procedural law contained in national and international laws and regulations.

“Dramatic moves have occurred in countering transnational crime since the turn of the twenty-first century. Binding international agreements, such as the UN Convention against Transnational Organized Crime, and the Convention against Corruption, are examples of nearly universally adopted principles and mandates that were difficult to foresee a generation ago” (Albanese, 2018). Analysis of numerous resolutions and conventions adopted by the UN shows that international cooperation of states to combat transnational crime at the present stage is different from the models that existed before.

Based on the current trends of globalization, which is taking place throughout the world and directly relates to the sphere of the teamwork of countries in the area of resisting international crime, changes should affect not only its structure itself, but also the regulation of the relevant relations at the national level of individual states.

“International cooperation seeks to realize: a harmonized system of laws by all States, which will place particular emphasis on the general provisions of criminal codes and the definitions of the most serious offenses; the definition of the area of the offending crimes of mankind to realize through international agreements a solid and effective system of criminal prosecution for serious offenses; regulation of jurisdictional conflicts with the uniform provision of crimes against humanity that are not always “protected” and provided for in national criminal justice systems” (Liakopoulos, 2019).

Globalization of the world gives rise to active migration processes. The main criminogenic consequence of globalization is the globalization of crime, including transnational organized crime, international terrorism, and global corruption (Tymoshenko et al., 2020). In addition, the study of these migration processes shows that their subjects, migrants, both legal and illegal, often having a low level of education, lack of training and means of livelihood, create additional destabilization of socio-economic and, therefore, criminogenic situation, giving it the features of a global nature, by turning it into a

transnational scale. Understanding such complex social phenomena as crime, in particular, the crime of foreigners is impossible without the support of scientific research. For example, I. Rama explored the potential threats posed by migration processes, noting in his writings, “according to Europol reports, organized crime groups from the Western Balkans, Southeast Europe, and the former Soviet Union have been reported to increasingly engage in acts of property crimes in EU member countries, where the scale of violence used is significant. Committed crimes range from organized car thefts, counterfeiting banknotes, and even armed robberies” (Rama, 2021).

In the accelerated processes of world globalization, the political factor in solving the problems of combating transnational crime remains unchanged, which is emphasized in the works of R. McLean, who notes that “for example, Scotland’s ‘Serious Organised Crime Strategy’ incorporates the tactics of ‘diverting’, ‘detering’, ‘detecting’, and ‘disrupting’ drug supply and, in so doing, dismantling criminal networks” (McLean et al., 2018). The importance of the political factor on the impact of international cooperation in combating transnational crime is mentioned in his writings and C. Solar, “at a time when Latin America is experiencing societal unrest from human rights violations, corruption and weak institutions Government and Governance of Security offers an insightful understanding for the modern steering of crime policies” (Solar, 2018). While some countries have chosen to fight transnational crime with their own resources and methods, other countries have felt the benefits of international cooperation in this field, as evidenced in his academic work D. Syanti, “other countries see the solution to fighting organized crime of a transnational nature through cooperation. For cybercrime to be fought effectively, it is important to ensure that combatting cybercrime is part of a broader national strategy that encourages the cooperation between national law enforcement and security agencies” (Shanti, 2020).

International crime can be overcome only through the efforts of the international community; there is no other solution to this problem. It is an obvious fact that it is impossible to counteract transnational crime at the level of individual states. On the basis of the scientific works analyzed in the article, we can conclude that cooperation of an international nature in the field of criminal proceedings - various forms of activity of competent authorities aimed primarily

at providing legal assistance, in order to combat crime (Lemon, 2019; Liakopoulos, 2019; Shanti, 2020). First of all, international cooperation in combating transnational crime refers to the activities of law enforcement agencies of states that carry out investigative and investigative activities, “on a daily basis, police services from countries with different legal traditions and diverse criminal justice systems exchange legal documents and criminal intelligence for the purpose of tackling transnational and international crime or to locate individuals” (Calcara, 2019). Models of international cooperation to combat transnational crime are multivariate, “it also seems possible to summarize that, given the fact that the fight against crime is, to a greater extent, an internal matter of each state, most of the legislation to combat crime falls under national laws, as well as studies by foreign lawyers focus on the study of international cooperation in criminal proceedings within one state or one region (Folami & Naylor, 2017).

What is clear is that countries that engage in the transnational teamwork in the field of criminal justices are determining how to implement the reforms announced in the state. In the fight against organized crime of a transnational nature, these reforms are necessary for the implementation of criminal justice partnerships. First of all, and as a rule, countries declare a comprehensive renewal of legislation (including criminal procedural) without risks limiting the rights, freedoms, and legitimate interests of every member of society. But changes in legislation without their proper scientific justification, lack of a systematic approach, do not solve existing problems, and sometimes even create new ones. At the same time, we can observe positive examples of successful legislative reforms regarding transnational teamwork in the field of criminal justice. They are the State Program on Fighting Corruption for 2004-2006, the new National Strategy for Increasing Transparency and Combating Corruption in 2007, the Action Plan for 2007-2011 adopted by the Republic of Azerbaijan. The main objective of the announced reforms in this field was to bring the criminal proceedings of the Republic of Azerbaijan to European standards. Obviously, the achievement of this goal is possible with the help of reforms of criminal procedural legislation. It is exclusively through a timely response to emerging problems in international cooperation against organized crime, as well as through the reform of its models.

The Republic of Azerbaijan actively participates in the adoption of international normative legal acts important for the reform of the criminal justice system. This country has adopted: European Convention on Mutual Assistance in Criminal Matters (with its additional protocols), the European Convention on the Transfer of Proceedings in Criminal Matters, the Convention on the Transfer of Sentenced Persons (with its protocol), the European Convention on Extradition of Offenders (with its two additional protocols), the Convention on Laundering, Search, Seizure and Confiscation of Proceeds of Crime, and the European Convention on International Recognition of Judgments in Criminal Matters.

In the framework of the Commonwealth of Independent States, Azerbaijan has the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (with its Protocol), within the UN, the Convention against Transnational Organized Crime (with two additional protocols to it). It is in the era of large-scale changes, worldwide globalization, and digitalization of the world community, that the search for new effective models of international cooperation in combating transnational crime is necessary, as evidenced by the experience of the Republic of Azerbaijan and confirmed in academic circles. For example, T. Malanchuk notes that “today, the world is facing the fact that international crime has become a reality and a global problem. A powerful, comprehensive, and diverse system of measures is used to combat international crimes committed by organized crime” (Malanchuk & Kyrychenko, 2021). In the Republic of Azerbaijan, the legal basis for the transnational teamwork in the field of criminal justice is primarily the Constitution, as well as international treaties whose consent to be bound has been given in the prescribed manner and other laws and regulations of the Republic of Azerbaijan. The Republic of Azerbaijan provides assistance in penal law with the Kyrgyz Republic, the Republic of Uzbekistan, and the Russian Federation, in accordance with the cooperation agreements concluded between these countries.

The Republic of Azerbaijan is a member of the International Criminal Police Organization, Interpol, which testifies to the high achievements of this state in cooperation with law enforcement agencies of foreign countries in the field of criminal proceedings. The role of Interpol, as an important international body involved in the cooperation of efforts of various states in the

fight against transnational crime, is also noted in the works of foreign scholars, G. Calcara, "with 194 members, INTERPOL is the most influential actor in matters of transnational policing" (Calcara, 2021) and also E. Lemon draws attention to the fact that "Interpol, the world's leading police-cooperation body, aims to "connect police for a safer world (Lemon, 2019). At the same time, it should be noted that against the background of globalization, Interpol is only a global information network, while the tasks of combating transnational crime at this stage include the joint action of different states to suppress it, as well as the investigation and detection of crimes.

When investigating any criminal offence, a set of investigative (search) actions is carried out, the effectiveness of which depends on compliance with the relevant stages, in particular on the quality of preparation for their conduct, as evidenced by the successful international cooperation of the Republic of Azerbaijan in the field of criminal proceedings.

Methodology

During the study the following general scientific and profile legal methods were applied: the method of comparison when studying and comparing the experience of the Republic of Azerbaijan and other foreign states in the field of international cooperation in combating transnational crime, methods of analysis and synthesis, methods of induction and deduction when studying the basic concepts, methods, and techniques in the teamwork of countries in the area of resisting transnational crime, as well as models methods when studying the prospects for further development.

Results

The relevance of the research is due to the increasing need for coordination of efforts to cooperate with the entire world community in criminal justice. The need for close cooperation of states at the international level in criminal proceedings, in turn, is caused by what is happening in all spheres of social life - integration processes, which have a negative impact on crime and the number of committed crimes.

The problem is the fact that at this stage most crimes are prosecuted at the national and not at the international level, even if we are talking about transnational crime. To combat crimes that are transnational in nature, countries prefer the

use of bilateral agreements that concern, for example, legal assistance, extradition, and the coordination of investigations.

Analysis of contemporary international transnational crime shows that its most common forms are: drug trafficking, arms supply, trafficking in chemical and nuclear materials, trafficking in women and children and human organs, theft, and smuggling of cars, domestic and international terrorism, extremism, and corruption. When it comes to the initiatives of States to combat transnational crime, at this stage in the field of criminal justice they include both special investigations carried out with the help of international investigative actions; and joint investigations conducted by teams composed of representatives of different states authorized to conduct proceedings in the territory of the represented countries; and international searches, seizure, and confiscation of money and property that have been obtained by criminal means, proceeds of crime; and mutual legal assistance in criminal cases using the latest digital technologies.

On the basis of the above, it is possible to define two directions of international cooperation in the fight against transnational crime, to distinguish its two levels of implementation: the one that takes place at the level of treaties concluded by countries on cooperation efforts in this field, and the one that takes place through the institutions of the states that interact with each other. An example of the first is the various legal assistance treaties, while on the second level is the interaction the second level is the interaction of law enforcement agencies.

The reason for the search for new initiatives lies in the growing transnational crime, which generates its new, previously unknown forms (for example, high-tech crimes, arms trafficking, human trafficking, and international terrorism). History shows that the need to create international criminal courts, was justified both in terms of law and morality, because we are talking about eternal values of humanity, such as justice, as the value of human life, as the inevitability of punishment for the crime committed.

It should be emphasized that the formation of the system of international criminal justice and, accordingly, the special order of its bodies with different states, and national criminal justice authorities, also includes the creation of international courts. This refers primarily to ad hoc international criminal tribunals created by

the Security Council as subsidiary organs of the UN (the Special Court for Sierra Leone) and also formed by the UN in the territories of states where peacekeeping operations take place (courts in Kosovo); internationalized courts with jurisdiction to try international crimes involving international judges (War Crimes Division of the Court of Bosnia and Herzegovina); the International Criminal Court.

If we talk about the trends observed in the area of resisting international crime at this stage, we can summarize the following: at the bilateral and multilateral levels the regulation of already established legal institutions of cooperation (such as, for example, legal assistance, extradition) is improved; with the improvement of already established, new legal mechanisms and algorithms of legal regulation in the field of criminal proceedings are formed (for example, international cooperation in criminal matters).

According to these trends, it seems possible to propose the following ways to reform international cooperation in criminal proceedings, namely: as an improvement of the already existing regulation of the already established legal institutions of cooperation at the bilateral and multilateral level; separate criminal justice cooperation, especially with regard to new areas of the teamwork of countries; the fight against organized crime with its own right, if it implies that the problem should be addressed at the national level and if such a solution is possible without the involvement of the legal forces of other States; the use of informal mechanisms for cooperation in criminal matters or their alternatives, as a response to changing patterns of transnational crime as well as the appearance of new types of crime.

All issues that in one way or another concern democracy are international, because they are reflected in normative legal acts mutually constituted developed and duly adopted by the world community. The national systems of states cannot develop in isolation from international law, as their limited scope cannot meet the current realities. It is also important that the effectiveness of legal regulation of international cooperation in criminal proceedings depends on international law, as mentioned earlier, and on the comprehensive use of the achievements of national and international legislation. The codification will have a number of advantages, first, to eliminate existing contradictions between the legislations of different countries, and second, to create a unified normative legal act, which will allow developing a general balanced

to the legislative regulation of all types of legal assistance and cooperation.

International cooperation in the field of criminal law is a coordinated and formalized action of the states represented by the authorized state bodies, aimed at providing legal assistance in the field of criminal proceedings. The latter is carried out, for example, through joint criminal prosecution, recognition of judgment, resolution of criminal cases.

State cooperation in the field of criminal law, in turn, taking into account the specificity of this category of relations, assumes a higher efficiency in the presence of bilateral and multilateral treaties and agreements. They impose specific obligations on States and regulate this area of relations in detail, often including a specific mechanism for implementing the powers and written intentions of States. Such treaties and agreements contribute to closer cooperation between states, confirm the reciprocity in the implementation of procedural decisions, regulate in detail the obligations of the competent law enforcement authorities, which are responsible for the implementation of norms on the provision of international legal assistance. And, since the process of codification is a complex process by its legal nature, in its implementation it is necessary to take into account both the national interests of the states and the mentality of their people, traditions, customs, as well as political relations between states.

Despite the fact that the fight against crime is, for the most part, an internal affair of states, and the bulk of the legislation on combating crime is national in nature, this does not mean that national legislation is isolated from international rules and standards. Otherwise, it will have the effect of reducing the effectiveness of the work against transnational crime. Enforcement agencies in the field of international criminal proceedings in many states do not meet modern realities, which has a negative impact in this area. Often, it is not related to the proper competence of employees and is explained by the small number within a particular state. The solution to this problem, in our opinion, is not a quantitative increase, but, to a greater extent, professional training and professional development of existing employees.

Discussion

Every democratic state in the world is trying by all possible legal means to provide both ideological and political and organizational

influence on the mechanism of countering transnational crime, which exists at the present stage in the world community, keeping a balance between the national interests of their country, and, at the same time, adhering to the trends in international relations in this area of activity.

The problem of interaction of states represented by their law enforcement agencies and officials with foreign counterparts is relevant because of the fact that in the world the fight against crime within one country affects the state of crime and its growth at the international level. We believe that it is only through international cooperation and joint efforts that peace and security can be maintained in the fight against crimes of a transnational character, such as drug trafficking, trafficking in human beings and weapons, and corruption, among others.

It is an undeniable fact that the national legal system of any democratic state develops in direct close cooperation with international law. This can be explained from the point of view that its isolated position cannot meet the challenges of today's realities: world globalization in the form of increasing political, socio-economic, commercial, and cultural relations between different countries, as well as the spread of transnational crime, as one of the negative consequences of the globalization process.

The hallmark of a democratic state that has high standards of justice and professional conduct in the fight against crime is its willingness to assume responsibility for introducing and maintaining an effective criminal justice system. A positively productive justice system is precisely one of the highest standards of a democratic state, which contributes both to the social and economic development of every person in it. Many crimes in today's world have transcended the boundaries of domestic issues and are increasingly becoming international in scope, which is of concern to the entire world community. Transnational crime causes irreparable harm to states, and it can be successfully combated only with the help of the international cooperation of states.

As for the mentioned role of international law, adherence to it and observance of the principle of good faith fulfillment of international obligations directly affect the creation of effective national legislation of states in the field of criminal justice. And the processes of globalization and the emergence of new technologies and types of crimes of transnational nature indicate that the reform of already existing legislation in this area,

it is necessary to consider the fact of both its theoretical and practical value. A comprehensive approach, using the achievements of both national and international legislation, is necessary for the process of law reform in criminal proceedings. In order to build a successful system of international cooperation in criminal proceedings, it is necessary first of all to overcome the phenomenon that even closely related legal systems develop in isolation and remain nationally limited.

Criminal proceedings is one of the most important and, at the same time, the most complex form of implementation of justice. The peculiarities of the criminal process are, above all, that its result can be a significant restriction of human rights, embodied in the form of punishment. For the above reasons, judicial and legal reform is of particular relevance, the main purpose of which is to create a judicial process of a protective type, in which the mechanism for implementing the principle of legality remains viable: the human being, his/her life, health, honor and dignity, inviolability, and security are defined in the Republic of Azerbaijan as the highest social value. The observance of individual rights and freedoms is the main prerequisite for any type of activity, both in the legal and political activity of the state. Such a system of justice, which exists in the Republic of Azerbaijan today, is capable of actually protecting the rights and legitimate interests of persons who have been victims of crimes, protecting innocent citizens from baseless and illegal charges and convictions, and ensuring fair punishment for those who have actually committed a crime.

It follows from the foregoing that the prevention, investigation, and cessation of transnational crime, as well as the prosecution of the perpetrators of a crime of an international nature, cannot be carried out unilaterally by a State without the assistance of other States and competent international organizations in this field. The unilateral confrontation with transnational crime pursued by certain States, such as Ireland, has led to the obvious conclusion that external assistance in combating it is necessary. Thus, "contemplating the evolution of international criminal justice over the last century, one cannot help getting the impression of an enterprise that has come full circle (Mégret, 2018). None of the projections of the results of these initiatives are known, but reforms are certainly already in place, despite the fact that the consequences of reforms of international cooperation in criminal matters are even more

difficult to determine because of different international relations and geopolitical trends.

There are many variations in the ways in which states can cooperate in the fight against transnational crime. This refers primarily to those situations when the states cooperate with each other in the field of criminal justice but unequally interpret and, accordingly, apply the provisions of international treaties. This shows that it is necessary to harmonize the application of international instruments in the territories of the States concerned, which would have a positive impact on law enforcement practice. Next to this problem also arises the issue of priority of national and international legislation, since the specificity of criminal-law and criminal-procedural relations is that they affect the public-law sphere of state activity, with the priority of international norms, enshrined at the constitutional level, the emergence of contradictions is inevitable.

Conclusion

The legal conditions of detection of each criminal offense and exposure of the offender, the inevitability and fairness of punishment for the committed criminal offense are designed to ensure fair justice. The study showed that the search for effective and adequate nature and level of crime procedural means, guaranteeing the solution of this problem, while respecting and protecting the rights of all participants of criminal proceedings is one of the tasks in any democratic country.

When there are tensions between foreign states, the concomitant factor is certainly the complication of cooperation in the fight against crime, especially when there are certain differences in the ideology of these states, which is also a problem of a foreign policy nature in the joint assistance of states in the fight against transnational crime.

It is for this reason that it is important that the improvement of such an interdisciplinary institution as international cooperation in criminal matters be carried out comprehensively, taking into account the interrelation and interdependence of the national law of the states participating in such cooperation, as well as the law, which has an international nature by its legal nature.

Undoubtedly, the issues of cooperation between states in the sphere of combating transnational crime are relevant in the light of the processes of

globalization and digitalization of the world community. These very processes are new opportunities for the development of human civilization and, at the same time, the cause of the emergence of new, previously unknown, types of crime, which can be solved by joint efforts of international cooperation.

Therefore, it seems appropriate to propose to develop cooperation between law enforcement agencies at the domestic and international levels, improve the security of computer networks and infrastructure protection, and provide long-term technical assistance and assistance to national agencies to build their capacity against cybercrime and other new types of transnational crime.

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