MODULE V: BILATERAL AND MULTILATERAL INSTRUMENTS OF JUDICIAL COOPERATION IN CRIMINAL MATTERS

In the second half of the last century, the most serious forms of crime (terrorism, drug trafficking, trafficking in human beings and organised crime in general) burst onto the international scene. In order to combat this new criminal phenomenon, cooperation between states became necessary. As described in Module I, the concept of criminal law based on the classical theory of sovereignty went into crisis -due to its ineffectiveness– and alliances began to be formed; first, between states and subsequently in regional theatres, leading to a supranational response to a problem that transcends the borders between states.

International cooperation for the suppression of transnational crime underwent a remarkable evolution. Opposite the classical theory of sovereignty, based on territoriality and non-intervention, which favoured the impunity of international crime, international cooperation emerged strongly, based on principles that objectively restrict the sovereignty of each state. In this regard, the inestimable contribution of international organisations both on a universal level (United Nations) and a regional level (the Organisation of American States, African Union, the Council of Europe and the European Union, among others) has been decisive in the fight against this criminal phenomenon.

The United Nations (UN) is an international organisation with a universal vocation, established in the Charter of the United Nations in general terms, in which those regarding international peace and security take precedence, meaning that the development of policies on international judicial cooperation in criminal matters is intimately linked to its activity.

The UN has passed a significant number of regulatory documents, mainly multilateral conventions, but also declarations, resolutions and recommendations, aimed at combating the most serious manifestations of organised crime (terrorism, drug trafficking and organised crime in general) as well as the internationalisation of all

criminal activities. To that end, the UN has promoted the development of cooperation policies in each of its conventions.

Meanwhile, it is important to highlight that one of the greatest concerns of the United Nations in the last few years has been the prosecution and punishment of those responsible for serious, large-scale violations of fundamental human rights and the basic principles of international humanitarian law. In order to address this, different routes have been taken:

- On the one hand, the expansion of the criminal jurisdiction of states in relation to the crimes against the international community and the rights of man, extending the cases in which the criterion of the universality of the criminal jurisdiction of states is recognised, and whose internal legal systems have progressively started to recognise the obligation of states to either prosecute or extradite those accused of such crimes.

- On the other, and parallel to the above, the creation of International Criminal Tribunals, the route taken by the Council of Security to create initially *ad hoc* (in 1993, with the International Criminal Tribunal for the former Yugoslavia, and in 1994, with the International Criminal Tribunal for Rwanda), and later, permanent and universal bodies, with the approval of the Rome Statute, which created the International Criminal Court in 1988.

- Finally, the search for new jurisdictional formulas to deal with the suppression of crimes committed, with the appearance of internationalised courts of a hybrid nature (both in relation to their composition and the law applied). Hence the jurisdictional bodies established in Sierra Leone, Cambodia, East Timor, Kosovo, Bosnia-Herzegovina, Iraq and the Lebanon.

This process of internationalisation of criminal justice is related to the important development undergone by International Criminal Law in the nineties (such as the 1996 Code of Crimes against the Peace and Security of Mankind). Crimes against international law (aggression, genocide, crimes against humanity) refer to offences that can be considered consolidated today. Several new procedural systems have been created to protect the interests of the International Community, in particular the novel position that the individual (both the accused and the victim) acquires in the international legal system.

In this Module V we will first deal with the conventions, resolutions and other UN instruments in unit 14, before embarking on the second part and studying, as part of the international jurisdiction, the plurality of international criminal courts as well as the universal nature of the criminal jurisdiction of states, before concluding with a reference to what is known as transitional justice, referring to a collection of processes of a judicial or other nature that take place in societies undergoing a *transition to democracy* in order to ensure reconciliation and that justice is done in relation to violations of human rights occurring under the previous regime, thus facilitating a stable and lasting peace.

Organised crime, drugs and corruption will be addressed – with the help of José Mouraz, a Portuguese judge – in unit 15, looking at both the legal-criminal problems they cause and the regulatory responses (legislative harmonisation, international police and judicial cooperation and respect for fundamental rights) based on the international conventions approved in the UN, specifically: the Convention against Transnational Organized Crime, done in New York on 15 November 2000, the Convention against Corruption, signed in Mérida (Mexico), on 31 October 2003 and the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, adopted in Vienna on 20 December 1988.

In unit 16 we will continue to study sector-specific conventions, in this case terrorism, which merits a specific section, as well as the fight against money laundering and terrorist financing. This will be led by an expert in the field, José Ricardo De Prada, a judge in the Spanish National Criminal Court (*Audiencia Nacional*). It is worth highlighting that as yet it has not been possible to reach sufficient international consensus to establish a universal definition of terrorism or, largely as a result of this, a single, global and universal convention on terrorism; there are however, as we will see, several sector-specific conventions as well as other international law rules that are designed to establish a universal system of cooperation in the fight against terrorism, to the extent possible.

Finally, the specialist in cooperation and university professor Raquel López, in unit 17, will analyse the Agreements signed by the EU with third parties and international organisations on police and judicial cooperation in criminal matters. To be precise, we will be looking at the ones signed with the International Criminal Court (ICC), with the USA on Extradition and Legal Assistance in criminal matters, with the Republic of

Iceland and the Kingdom of Norway and with Japan. Apart from these Agreements, the EU Member States have signed bilateral agreements with third countries in relation to international legal cooperation in order to facilitate said cooperation and these will also be dealt with in said topic.

I wish you the best of luck and trust you will profit from your study of this module.

Kind regards

Ignacio U. GONZÁLEZ VEGA