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