

*Speech given by James Hamilton, Director of Public Prosecutions
at the Asia-Europe Meeting (ASEM) Prosecutors-General
Conference in Shenzhen, China ~ 9-12 December 2005*

Prosecutor General Jia, fellow prosecutors, ladies and gentlemen,

Let me begin by thanking Prosecutor General Jia and the authorities of the People's Republic of China for their initiative in organising this meeting of prosecutors from Asia and Europe. The initiative is a highly significant one. The fact that the Chinese authorities decided to extend this invitation and that it has received such a positive response from senior prosecutors throughout Europe and Asia tells us how rapidly relations between China, the rest of Asia and Europe have changed and are changing, and how rapidly change is happening to our world.

During the summer I had the honour to host a visit to Ireland from Mr. Jia and senior Chinese prosecutors. His visit left me in no doubt of his personal commitment to develop warm and friendly relations between our two countries.

He was accompanied on that visit by Dr. Ye, the head of the International Division of the Supreme People's Procuracy of the People's Republic of China. Dr. Ye's hard work within the International Association of Prosecutors and the good relations he has established between the Chinese and other prosecution authorities are largely the cause of the warm response to the initiative to hold this conference.

I would also like to thank the authorities of the People's Republic of Guangdong province and of Shenzhen for their wonderful hospitality, the warmth of their welcome and the hard work, enthusiasm and efficiency they have brought to the organisation of the conference. All of these bear testimony to the importance they attach to this event.

It is timely that we should for the first time hold a meeting of the Prosecutors General of Europe and Asia under the auspices of ASEM. As the invitation to attend this conference pointed out, “with economic globalization and rapid advancement of an information society, transnational organized crimes have become more rampant, causing greater damage to societies”. International cooperation is indeed indispensable in effectively combating transnational organised crime.

In the twenty-first century there are links between our countries that could hardly have been predicted even a few short years ago.

The age of globalisation has led to ever increasing links between countries at opposite ends of the earth. In my parents’ time the countries of Asia seemed impossibly remote to most western Europeans. Now there is trade between distant countries on a scale that would have been unimaginable at that time. May people routinely take holidays on the other side of the globe. There are population movements of a magnitude which is unprecedented in history. Go into any hotel or shop in Dublin and it is hardly an exaggeration to say that the person who serves you is as likely to have been born in Lithuania, or China, or Poland as Ireland. Irish newspapers carry advertisements advising their readers to invest in property everywhere from Shanghai to Sofia.

All this movement of people, of goods and of capital creates huge opportunities for criminal activity. The attractions of engaging in crime across frontiers are increased by the difficulty that countries have in securing effective cooperation between different jurisdictions. Certain offences typically have a transnational element, notably terrorism and the trafficking of people and drugs.

It is therefore timely that the countries of Europe and Asia should meet together in Shenzhen to discuss the possibilities of strengthening cooperation and coordination between our law enforcement agencies.

Let me, however, sound a note of caution. Effective mutual assistance and judicial cooperation must be built on trust and respect for human rights. In a democracy effective international cooperation cannot be secured without the support of public opinion. Public opinion will support cooperation with states which respect the rule of law, and which provide effective guarantees for the right to a fair trial, but will not support cooperation with states where these conditions are not met.

In Europe we have found that effective mutual assistance has developed at the same time as the European Convention on Human Rights and Fundamental Freedoms has been applied to ensure respect for the rule of law and human rights. The Convention has now been brought into effect through almost the whole of Europe. It is not a coincidence that mutual legal assistance is most developed among the same states which have developed this system which guarantees human rights. It is precisely because of the guarantees for human rights that have been put in place that public opinion is prepared to support effective judicial cooperation.

If we are to build effective methods of judicial cooperation between all the countries of our two continents it is therefore essential that this be done on the basis of adherence to and effective enforcement of the principles set out in the United Nations Universal Declaration on Human Rights and the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, together with the various international conventions which deal, among other matters, with racial discrimination, discrimination against women, torture and the rights of the child. In the absence of effective enforcement of human rights the scope for cooperation in matters of mutual assistance is likely to be very limited. Such a situation, unfortunately, can only be of benefit to the criminal.

At a minimum, therefore, a number of core principles must be recognised and put into practice in those states which wish to secure effective cooperation in

criminal matters. These include, firstly the principle that an independent judiciary must hear and determine cases. Secondly, the principle of legal certainty must be respected. Persons must be charged with, tried and convicted only for offences known to be offences at the time they are committed. Thirdly, all detainees must have an effective right of access to courts of law within a reasonable time of their detention. Fourthly, all persons charged with offences must have effective access to competent legal representations of their own choosing, at public expense where they have insufficient means to provide it. Fifthly, there must be respect for the principle of equality before the law, and in particular the principle of equality of arms between the prosecution and the defence. Furthermore, trials must comply with all of the other safeguards set out in Article 14 of the International Covenant on Civil and Political Rights, including the right of the accused person to be presumed innocent, the right to be informed promptly and in detail in a language the accused understands of the charges being brought, the right to be tried in public, and without undue delay, the right to have adequate time and facilities to prepare a defence, the right to be tried in his or her presence, the right to examine or have examined witnesses, and to obtain their attendance, the right to have the assistance of an interpreter, and the right not to be compelled to testify against himself or herself or to be made to confess guilt.

It is important that we engage in dialogue with a view to bringing about the effective implementation of all of these rights in all of the countries represented at this conference. While we must recognise the real problems faced by many states and recognise real progress towards the implementation of human rights standards where these have taken place, it is, in my judgement, important to assert the universality of human rights standards, and to reject the idea that they are a Western construct which need not be applied to all societies. That is a relativist approach which is itself demeaning of and dismissive towards non-Western societies.

Improved communication between prosecution agencies, study visits and exchanges can help us to inform each other about the different problems in different states. But unless there is the political will to secure effective implementation of human rights, and in particular the right to a fair trial, improved communication will not of itself create the conditions in which effective cooperation to combat crime can be brought about.

That is why I believe the communiqué from this conference ought to make express reference to human rights and to the necessity to secure adherence to and effective implementation of the core United Nations human instruments I have already mentioned. I believe this conference will have achieved a worthwhile goal if we can achieve the agreement of all participants that effective judicial cooperation to combat transnational crime not only needs to be built but can be built only on a foundation of respect for the rule of law administered by an independent judiciary, of respect for human rights, and subject to effective measures to secure those rights.

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